154 U.S. 496

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RECORD, CASE NO. 14183.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 202.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

HARRY R. SHULTZ.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 27, 1893.

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1 UNITED STATES,
Eastern District of Pennsylvania, set.:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Harry R. Shultz, plaintiff, and John Cadwalader, collector of customs for the district of Philadelphia, defendant, in a plea of assumpsit, a manifest error has intervened, to the great damage of the said John Cadwalader, collector of customs for the district of Philadelphia, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 12th day of June, A. D. one thousand eight hundred and ninety, and in the one hundred and 14th year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To HARRY R. SHULTZ, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John Cadwalader, collector of customs for the district of Philadelphia, is plaintiff, and you are defendant in error, to show cause if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this June, 24th day of June, in the year of our Lord one thousand eight hundred and ninety.

WM. BUTLER, *Judge.*

I hereby accept service of above citation for Harry R. Shultz, deft. in error.

EDWD L. PERKINS,
Atty for H. R. Shultz.

JULY 23rd, 1890.

(Indorsed:) 16 Oct., 1889, U. S. C. C., E. D. of Pa., Shultz *vs.* Cadwalader, late collector. Citation & acceptance of service for Shultz.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit.

HARRY R. SHULTZ
vs.
JOHN CADWALADER, LATE COLLECTOR OF customs for the district of Philadelphia.
} No. 16, October session, 1889.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1889, No. 16.

It is thus contained:

4 Be it remembered that on the first day of November, in the year of our Lord one thousand eight hundred and eighty-nine, Harry R. Shultz, by his attorney, Edward L. Perkins, esquire, comes into court here and sues forth therefrom a writ of summons against John Cadwalader, late collector of customs for the district of Philadelphia, which, with the endorsement and return thereto, is in the words and figures following, to wit:

5 UNITED STATES,
Eastern District of Pennsylvania, set.:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon John Cadwalader, late collector of customs for the district of Philadelphia, late of your district, if he may be found therein, so that he be and appear before the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia on the first Monday of November instant, to answer to Harry R. Shultz in a plea of assumpsit, and have you then there this writ.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this first day of November, A. D. 1889, and in the 114th year of the independence of the United States.

W. VON A. WILLIAMSON,
Pro Clerk of Circuit Court, U. S.

6 (Indorsed:) No. 16. Circuit court, October session, 1889. Shultz vs. Cadwalader, collector, &c. Summons. Assumpsit. Filed Nov. 4, 1889. Returnable on the first Monday of November, inst. E. L. Perkins, attorney for plaintiff.

I accept service of the within writ and request John R. Read, esq., U. S. attorney for the E. dist. of Penna. to enter an appearance for me in the U. S. circuit court.

JOHN CADWALADER,
Late Collector of Customs, Dist. of Philada.

NOV. 2/89.

7 And afterwards, to wit, on the 4th day of November, A. D. 1889, the plaintiff by his attorney comes into court here and files his statement of claim and bill of particulars, which being read are in the words and figures following, viz:

U. S. circuit court. October sessions, 1889.

HARRY R. SHULTZ
vs.
JOHN CADWALADER, COLLECTOR OF CUSTOMS for the district of Philadelphia. } No. 16.

Statement of plaintiff's claim.

In above suit the plaintiff sues to recover from the defendant moneys paid under protest by the plaintiff to the defendant as collector of customs for the district of Philadelphia, at the port of Philadelphia, as duties, in order to obtain possession of merchandise imported for the plaintiff, which moneys were demanded and collected by defendant in excess of the amount of duties authorized by law. Annexed hereto and intended as part of this statement is a bill of particulars showing the dates and amounts of such payments in excess and such other facts as are required by the act of Congress in such cases made and provided. Plaintiff aver that there is now due and owing to him by the defendant the full amount of such payments as shown by said bill of particulars, aggregating three hundred and eighty-six and $\frac{80}{100}$ dollars, with interest from their respective dates.

EDWARD L. PERKINS,
Attorney for Plaintiff.
Per J. C. J.

8 (Indorsed:) No. 16. October sessions, 1889. U. S. circuit court. Harry R. Shultz *vs.* John Cadawaladar, late collector of customs. Statement of plaintiff's claim and bill of particulars filed Nov. 4, 1889. Edward L. Perkins, attorney for plaintiff.

CIRCUIT COURT U. S.,
Eastern district of Pennsylvania:

HARRY R. SCHULTZ
against
JOHN CADWALADER, LATE COLLECTOR.

PHILADELPHIA, *Oct.* 31, 1889.

SIR: This action is brought to recover duties illegally exacted by defendant as collector of customs at the port of Philadelphia, and the following is the bill of particulars therein, viz:

Name of importer, .

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry of custom house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision thereon.	
Manure salt	Ship Cuba	Bremen	Feby. 18, '88	May 4, '88	Oct. 31, '89	386.80	Nov. 12, '88	Nov. 14, '88	Aug. 6, '89	Ap. 8468 J.

Very respectfully,

EDWARD L. PERKINS,
Per J. C. J.,
Attorney for Plaintiff.

To Hon. JOHN R. READ,
Attorney for Defendant.

(Indorsed:) 16 Oct., 1889, circuit court U. S., eastern district of Pennsylvania. Shultz against Cadwalader. Bill of particulars.

10 And afterwards, to wit, on the 16th day of January, A. D. 1890, the said defendant, by John R. Read, esq., his attorney, comes into court here and files his plea, which said plea is as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, October sessions, 1889.

HARRY A. SHULTZ
vs.
JOHN CADWALADER, COLL., &C. } No. 16.

And the said defendant, by John R. Read, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form, as the said plaintiff Henry R. Shultz above thereof complained against him, and of this he puts himself upon the country.

JOHN R. READ,
Attorney for Defendant.

11 (Indorsed:) No. 16. October sessions, 1889. In the circuit court of the United States for the eastern district of Pennsylvania. In the third circuit. Harry R. Shultz vs. John Cadwalader, coll., &c. Pleas of defendant. Filed Jan. 16, 1890. John R. Read, attorney for defendant.

12 And thereupon it is ordered that a jury come to try the issues joined in this case.

And afterwards, to wit, on the 14th day of April, A. D. 1890, come the parties aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit: George W. Paullin, Jacob C. Hoff, Richard A. Lewis, Sidney B. Brisco, George C. Strunk, J. George Klemm, Michael Riley, Wm. H. Larned, Jonathan Eisenhower, Chas. F. Rockwell, James P. Tatman, Wm. A. Coffey, who are duly empanelled, returned chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the 15th day of April, A. D. 1890, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively, do say that they find for the plaintiff and assess the damages at three hundred and ninety-eight $\frac{40}{100}$ dollars ($398\frac{40}{100}$).

13 And afterwards, to wit on the 17th day of April, A. D. 1890, the defendant by his attorney comes into court here and moves for a new trial, and in support of his motion assigns the following reasons, to wit:

U. S. C. C., October sessions, 1889.

SCHULTZ
vs.
CADWALADER, COLLECTOR. } No. 16.

Motion and reasons for a new trial.

And now, to wit, April 17th, A. D. 1890, on motion of the counsel for the defendant that court grant a rule to show cause why a new trial should not be granted:

1. Because the learned judge erred in instructing the jury that the case was to be decided according to the ruling of the court in the case of Hirsh et al. vs. E. S. Magone, collector.

14 2. Because the learned judge erred in charging the jury that if they believed that the article in suit was used expressly for manure that their verdict should be for the defendant.

3. Because the verdict was against the evidence.

4. Because the verdict was against the weight of the evidence.

5. Because the learned judge erred in overruling the points presented on behalf of the defendant.

W. W. CARR,
Ass't U. S. Att'y.

16 APRIL, 1890.

(Endorsed:) 16 Oct. Ss., 1889. U. S. C. C. Shultz *vs.* Cadwalader Motion & reasons for a new trial. Filed Apr. 17, 1890. John R. Read, U. S. att'y.

15 And afterwards, to wit, on the 17th day of April, A. D. 1890, come the parties aforesaid, and this cause being called for argument on motion for a new trial and having been argued by counsel for the respective parties and the court being fully advised in the premises, it is ordered that the motion for a new trial be denied and judgment entered on the verdict in favor of plaintiff and against the defendant.

Whereupon judgment is entered accordingly.

16 In the circuit court of the United States for the eastern district of Pennsylvania, of October session, 1889.

SHULTZ *vs.* CADWALADER, COLLECTOR. } No. 16.

Be it remembered that in the said term of October, A. D. 1889, came the said plaintiffs into the said court, and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiffs declared (prout narr.) and the said defendant pleaded (prout pleas.). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the district aforesaid before the Hon. William McKennan, judge of the said court, on the fourteenth and fifteenth days of April, A. D. 1890, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empannelled (*prout* list of jurors), at which day come as well the said plaintiffs as the said defendant by their respective attorneys; and the jurors of the jury aforesaid empannelled to try the said issue, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiffs, having opened the cause for the Government, offered the following testimony.

17 U. S. C. C., Oct. sess., 1889, McKennan, J.

SHULTZ *vs.* CADWALADER, COLLECTOR, &C. } No. 16.

MONDAY, *April* 14, 1890.

Present: Messrs. Perkins & Jones for plaintiff.

John R. Read, esq., U. S. district attorney, and W. W. Carr, esq., assistant U. S. attorney, for the Government.

EDWARD J. COLLINS, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your position?

A. I am clerk at the custom-house.

Q. Do you know about this particular shipment? Have you the invoice and entry of this shipment?

A. The invoice and entry are here.

(Invoice and entry produced.)

Q. Is that the original invoice and entry of the shipment of manure salt per ship "Cuba," entered May 4, 1888?

A. Yes, sir.

18 Q. Protest and appeal duly taken?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. This entry is No. 5419, "Cuba," Bremen Haven?

A. Yes, sir.

Q. What is that paper I show you?

A. That is the bill of lading. It calls for five hundred bags of manure salt.

Q. There is a second bill of lading, is there not?

A. Yes, sir. That calls for five hundred bags of muriate of potash.

Q. Please state what this entry is.

A. The entry was made for five hundred bags of manure salt, five hundred bags muriate of potash, and five hundred bags of muriate of potash.

Q. I show you the paper indorsed No. 5419, steamship "Cuba," May 7th. Does that correspond with the entry? This is the invoice belonging to this transportation, is it?

A. Yes, sir.

Q. Please look at this and state by whom these entries in black ink are made.

A. By the shipper of the merchandise.

Q. By whom is it signed there?

19 A. Heller, Hirsh & Company.

Q. And these entries in red ink, by whom are they made?

A. The entries in red ink are made by the appraiser. They are his returns.

HARRY R. SHULTZ, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. You are the person who imported these goods?

A. I am the person who made the entry at the custom-house.

Q. What did you do after the goods arrived, with the importation—particularly we will speak of the manure salt. That is the only item that is in dispute in this case.

A. After the entry was made under my instructions from Heller, Hirsh & Company, the owners of the goods, I presented the permit to the ship, and Messrs. Heller, Hirsh & Company gave instructions to the ship as to the delivery.

Q. You delivered the permit to the ship?

A. Yes, sir.

20 Q. After that your charge of the goods ended?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. I show you the entry that has been identified here, No. 5419, steamship "Cuba." You will notice this affidavit endorsed on the back of that entry. Is that your affidavit or not? In this you state that Julius Scarbaugh & Company are the owners of the goods. Where do they live?

A. I do not know. I received those orders from Messrs. Heller, Hirsh & Company.

Q. Whom did you represent?

A. Heller, Hirsh & Company.

Q. What do you know about Julius Scarbaugh & Company?

A. I do not know anything at all, except I presume he is the shipper. (After looking.) Yes; he appears to be the shipper.

Q. That is all you know about it?

A. Yes, sir.

By Mr. PERKINS:

Q. Your business is custom-house broker?

A. Yes, sir.

Q. You acted as the agent in the entry of these goods for Heller, Hirsh & Company?

A. Yes, sir.

21 DENNIS J. LAUGHLIN, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your position?

A. I am known as inspector of drugs and chemicals at the port of Philadelphia.

Q. You are a physician by profession?

A. Yes, sir.

Q. Have you produced with you a sample of the manure salt, per ship "Cuba," under entry of May, 4, 1888?

A. That is it to the best of my knowledge and belief.

(Sample produced.)

Cross-examination by the DISTRICT ATTORNEY:

Q. What is the use of muriate of potash?

Mr. PERKINS. I object. I called the doctor here to produce certain samples. That is all. It is not cross-examination. If the Government wish him they can call him for that purpose. I only asked him to produce a sample of the goods by the ship.

(Question withdrawn.)

JOHN BARNARD, having been duly sworn, was examined as follows:

By Mr. JONES:

Q. What is your business?

22 A. I am treasurer of Baugh & Sons & Company.

Q. What is the business of Baugh & Sons?

A. They are manufacturers of fertilizers and chemicals.
Q. Look at that sample that Dr. Laughlin left on the stand.
(Witness did as requested.)
Q. Do you recognize what that is?
A. I am not an expert, but I would suppose it was a manure salt or high grade of sulphate of potash.
Q. You use manure salt in the course of your business?
A. We do.
Q. For what purpose do you use it?
A. For fertilizers entirely.
Q. That is the only purpose for which you use it?
A. The only purpose.
Q. In what branch of your business do you use it—in making what fertilizers?
The DISTRICT ATTORNEY. The question here is not exactly what this gentleman may use this article for in his own business, but for what purpose is it bought, sold, and used in the trade at large, and I understand he has not qualified himself to speak about that point.
Mr. JONES. I asked him in what branch of his own business he used it; I asked him in regard to its other use. They use it as fertil-
23 izers; they make fertilizers for various purposes. I have no desire to press the question if the district attorney objects to it. My question was simply to draw out from him for what purpose they use the fertilizers with this particular material.
The COURT. The proper question is, for what purpose is it generally used? The question is, for what purpose it is usually sold?

By Mr. JONES:

Q. You know how it is used in your business?
A. I do.
Q. How is it used?
A. It is used for a brand—used for raising tobacco.
Q. Do you use this for fertilizer purposes?
A. Yes, sir.
Q. To made a compost for tobacco?
A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. How long have you been in this business?
A. About twenty-two years.
Q. Have you been with Baugh & Sons for twenty-two years?
A. I have.
24 Q. Before that what business were you in?
A. I was in the gas-fixture business.
Q. You were educated as a chemist?
A. No, sir.
Q. Since you have been with Messrs. Baugh & Sons you, of course, know the use of the trade generally?
A. Yes, sir.
Q. Do you mean to tell us that the only use that article has is the manufacture of fertilizers?

A. To the best of my knowledge; yes, sir.
Q. In your own business?
A. Yes, sir.
Q. How about the business of other people?
A. That I know nothing about.
Q. You speak of your own peculiar connection with Baugh & Sons?
A. Yes, sir; and our fertilizers.
Q. And you are not a chemist by education?
A. No, sir.

By the COURT:

Q. Are they dealers in articles of this kind?
A. We supply manufacturers of fertilizers with it as well as use it ourselves. We are dealers in that as well as manufacturers.
Q. For what purpose do you sell it?
25 A. For the manufacture of fertilizers. We have never sold anything for any other purpose—never sold this article for any other purpose.

By the DISTRICT ATTORNEY:

Q. So that you do not know what the general use of the article is in trade at all?
A. I do not.

Redirect examination by Mr. PERKINS:

Q. You have spoken of manufacturing it yourself, and you say you also sold it to others?
A. Yes, sir.
Q. To whom do you sell?
A. We sold some to I. P. Thomas & Sons; they are manufacturers of fertilizers.
Q. Have you made sales to any other persons of this article than those engaged in the manufacture of fertilizing articles?
A. We have not.
Q. You are the treasurer of Baugh & Sons, are you not?
A. I am.
Q. Can you tell about the amount in value of your sales of this article per year.
(Objected to by the district attorney.)
(Question withdrawn.)

26 By Mr. PERKINS:

Q. Do you or do you not know whether this article is used largely by fertilizers and the manufacturers of fertilizers?
(Objected to.)

By Mr. PERKINS:

Q. I understood you to say you know of other people in your trade?
A. Yes, sir; I have sold these goods to manufacturers of fertilizers for fertilizer purposes.
At one o'clock the court took a recess until two o'clock p. m.

2 P. M.

Mr. Perkins offered in evidence original protest, dated November 12, 1888, relating to the present case.

JAMES E. HELLER, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your business?

A. I am an importer and dealer in fertilizing materials in New York City, of the firm of Heller, Hirsh & Company.

27 Q. Referring to the papers produced this morning by Captain Collins, he was asked who Julius Schrabau was?

A. Mr. Julius Scharabau & Company are our shipping agents at Bremenhaven.

Q. Mr. Shultz was your agent who entered these goods for you?

A. Yes, sir.

Q. You were the real owners of the goods in question?

A. Yes, sir.

Q. State, if you please what you did with these goods.

A. We sold those goods and delivered them to the Keystone Chemical Company of Philadelphia, who have a factory at Camden, New Jersey.

Q. Look at the sample produced by Dr. Loughlin as a sample of this shipment, and state, if you know, what that is.

A. I know from its appearance, and if it is, as stated before—

Q. It is in evidence as a part of this particular shipment.

A. Then this is a high-grade manure salt, of which we have imported for a great many years to the United States for fertilizer purposes and for manure purposes.

28 Q. Where does it come from?

A. It comes from that part of Germany which is called the Province of Saxony, Stasford (witness named several places), and similar places in the neighborhood where salt is found in Germany.

Q. How is it obtained there? In your own way state how it is obtained and whether you have seen it there, what it is, and all about it.

A. This material is made from kainite, which contains a certain amount of sulphate of potash. This material is found in the mines in Stasford and the neighborhood of Stasford. It is a raw material. It is brought to the surface, placed in large tanks, there mixed in water, and in those tanks are contained stirring machinery, which, by the motion of steam engines in rapid succession, turn in the tubs and dissolve that kainite in the tub.

Q. What is kainite?

A. Kainite is a manure salt.

Q. What is it originally when it comes from out of the mines?

A. It is a mineral obtained out of the mines of Strasford. When
29 this is dissolved the water, containing a large percentage of the common salt and the sulphate of magnesia in the kainite, is drawn off, then again water is put upon it, and by that means all the sulphate of potash contained in the kainite and the common salt that may have remained back in these large vats is washed out and drawn off. After that is done this material is left behind, being sulphate of potash pure and simple, with an admixture of sulphate of magnesia, and some common salt

or chlorine is taken out in a mud shed. It is a muddy mass. It is taken out from there and put into large drying ovens, where it is dried by a coal fire, and when dried it is ground up and in that condition brought to the United States as a manure salt for agricultural purposes.

Q. Have you been abroad yourself and seen this process?

A. Many years in succession. I have seen the process from the beginning to the end. Not once, but a hundred times.

Q. Have you samples of that salt in the different stages of its development from the time it is brought out of the mines up to the time it is reduced to what you hold in your hand?

30 A. (Producing sample.) Here is the kainite, the raw material as it comes from the mine as a mineral, in which shape it is put in those vats.

(Producing another sample.) Here is an article which is made from this kainite and which contains a larger percentage of sulphate of potash and the common salt or chlorine than does the material which is now in question, because it is not washed as thoroughly as the other and it comes into the market here as double manure salt, containing twenty-six to twenty-nine per cent of sulphate of potash, the balance, of which is cooking salt or chlorine and sulphate of magnesia—the balance, besides the twenty-six to twenty-nine per cent of potash, is sulphate of magnesia and chlorine. This is the second stage. This is also kainite.

(Producing another sample.) This is the third, the manure salt in question, the sample in question. This is the material which has been washed twice. Sometimes when they find that there is a great deal more of sulphate of magnesia and of chlorine in it than there ought to be, they wash it a little more, and turn it out in this condition as we import

31 it, containing from forty-eight to fifty-one per cent pure sulphate of potash, K20 pure potash, which is equal to ninety-five per cent of sulphate of potash.

Q. That is, the component parts of this material now in dispute contain about forty parts of potash?

A. Forty-eight to fifty-one parts of potash.

Q. About how much sulph'ric acid?

A. I am not a chemist. I can not tell you that.

Q. It is the difference between that and the ninety-one?

A. That is, the difference between the ninety-one and the balance would be sulph'ric acid.

Q. According to the description which you have given of the process of manufacture, this article which is now in dispute in this suit is obtained from the original mineral known as kainite purely by mechanical means?

A. That is all.

Q. No chemical admixture with it in any way?

A. No, sir; pure mechanical washing of the goods. That is, they wash out the sulphate of magnesia and the common salt and leave behind the sulphate of potash, which is not as soluable as the two other salts.

32 Q. When you come to the second stage, and you have it in this mushy form, what is then done with it?

A. It is taken out of the vats and put into ovens and there dried; the water that has been mixed with it is dried out of it, and in that condition it comes here.

Q. How long have you been dealing in this particular article, this manure salt, as you call it?

A. If my memory does not deceive me I think that the first importation of these goods into the United States was either in 1883 or 1884.

Q. And made by whom?

A. Made by the Asherslaver Company. The importation was made by Heller, Hirsh & Company.

Q. You made the first importation of this salt?

A. As far as I know; of this material.

Q. Have you dealt in it constantly from that time to this?

A. We have.

Q. For what purpose have you used that salt; and, if you know, for what purpose has it ultimately been used by others?

(Objected to.)

Q. Do you know for what purpose this salt is used?

33 (Objected to.)

Mr. PERKINS. I propose to show by the witness what they do with this material, and what is used for. I propose to ask the witness what he uses it for, what he does with it when he gets it, and if he knows what it is used for by those to whom he sells it.

The COURT. I understand the witness has dealt largely in this material.

The WITNESS. Yes, sir.

The COURT. He may state, if he knows, what he does sell it for.

By Mr. PERKINS:

Q. For what does your firm use this article in which you say you deal?

A. We import these goods expressly ——

The COURT. You sell it?

A. Yes, sir; we import it for sale. We import these goods into the United States, and have ever since, for the purpose of manures; to use it for manures expressly. We have sold it to fertilizers all over the country in every direction, and we know that it has been used for that purpose any-

34 wheres and everywheres where fertilizers are made. Not only this, but I have taken special pains to introduce these goods, beginning in 1882 and 1883, because I have learned from information and personal observation that the tobacco trade in the United States—the tobaccoes all over the United States have degenerated, and it was because they have been using too much chlorine with their fertilizers. I have travelled from one end of the United States to the other to see every important manufacturer of fertilizers, and also every important grower of tobacco. I found that all over the United States tobaccoes have degenerated. The cigar manufacturers and the manufacturers of tobaccoes tell me all over that they have not been able to get as good material of tobaccoes as they used to get, and that they believed it was owing to the large percentage of chlorine contained in all of the fertilizers they were using.

(Objected to.)

Q. Bring yourself down to the question as to the use of this article.

A. I only wanted to state why and how I came to introduce these

35 goods into the United States for agricultural purposes principally and expressly. We have sold them to fertilizer men all over the country. Farmers have used it in its pure state, in which it comes to

these United States, as the manufacturers of fertilizers, with their compounds for manures. I know that because I have seen nearly every manufacturer in the United States who has used it and who is still using it.

Q. I understand you have sold this solely for the purpose of fertilizers?

A. Principally.

Q. What do you call that article?

(Objected to.)

Q. How is it designated in the trade?

A. High grade manure salts.

36 Cross-examination by the DISTRICT ATTORNEY:

Q. You are represented by Earnest Walters, are you?

A. Earnest Walters is the gentleman who has entered that entry at Magdeburg, at the consul's of Magdeburg.

Q. Are you represented or are you not by Mr. Earnest Walters?

A. He entered the goods at the consul's.

Q. He is your agent, is he not?

A. He is our agent to enter the goods at the consul's.

Q. But he signs himself Heller, Hirsh & Company by his name. Is it not so?

A. Yes, sir; he is our agent for that purpose.

Q. And you are the Mr. Heller who is also of this firm for whom he was acting?

A. Yes, sir.

Q. You speak of the kainite being a manure salt. That I understand to have been the first sample that you produced?

A. Yes, sir.

Q. This, I presume also, the second one, to which you have not yet given a name, is a manure salt?

A. I did name it. It was double manure salt.

37 Q. This is the sample, I think, you spoke of being double manure salt?

A. No, sir; you are mistaken.

Q. This is the sample of the importation?

A. Yes, sir; that is high grade.

Q. And this one is double manure salt?

A. Yes, sir.

Q. You said that there were other salts in this same neighborhood. Kindly tell us whether they are not manure salts too.

A. Yes, sir; there is keiserite; that is a manure salt.

Q. Tell us some other of the manure salts that come from this neighborhood.

A. Muriate of potash is used as a manure salt.

Q. What else?

A. I do not remember of any other.

Q. There are a great many around here?

(Objected to.)

Q. What other articles are manure salts? Name other articles that are manure salts besides the number that you have spoken of.

A. There is another called silvainite.

Q. What others?

A. I guess that is all.

38 Q. You have evidently studied this question. Is there not a nitrate of potash; is not that a manure salt?

A. No, sir.

Q. How about carbonate of potash; is not that manure salt?

A. It is not used as such. It is not a manure salt to my knowledge.

Q. How about a double muriate of potash and sulphate of magnesia?

A. I never heard of it.

Q. You are familiar with the Oil, Paint & Drug Reporter, are you, published in New York?

A. I have occasionally seen it and frequently read it.

Q. And I presume of course they use there the terms that you speak of and have knowledge of in your business, do they not?

A. I do not know as they always use the names of the goods as they ought to.

Q. Perhaps, if there is, for instance, a manure salt named there, your own judgment and knowledge would be better than the Oil, Paint & Drug Reporter, would it?

A. I think it would in many respects.

Q. You speak of the use to which this article is put. Do you mean to tell me that sulphate of potash is used is no other business than

39 that of the manufacture of fertilizers?

A. I did not speak of sulphate of potash. I spoke of manure salt, such as we import.

Q. This article is sulphate of potash, is it not?

A. No, sir.

Q. Is it not so bought, sold, and named and used in the trade?

A. Sometimes it is called sulphate of potash for manufacturers to designate it from muriate of potash for manures.

Q. I understand you then to modify what you said as to its only being known as a manure salt, that it is sometimes known as a sulphate?

A. Called so.

Q. What other business besides fertilizer business are you familiar with that use this article in trade?

A. This particular kind of importation?

Q. Yes.

A. I do not know. I know of some people who have tried to use it for othe purposes, I understood, but they have not succeeded—used it and dropped the use of it.

Q. How long were they using it?

A. I do not know.

Q. In what business were they?

40 A. They were in the chemical trade.

Q. Then there are some other businesses who use it?

A. They tried to use it.

Q. Do you know of any other business who used it?

A. No, sir; I do not.

Q. That is the only one?

A. Yes, sir.

Q. How long have you had knowledge of this article?

A. Ever since it was imported into the United States, of this material.

Q. What year was that?

A. About 1883 or 1884, I think it was.

Q. Please fix that date a little bit closer. Was it in 1883 or 1884?

A. If you will permit me to look at my memoranda I could tell you about what time we imported the first of these goods. [Looking at memoranda.] I think it was 1884.

Q. What date, the beginning or the end of the year?

A. I think it was about the middle of the year.

Q. Say July of 1884?

A. I could not positively swear which month it was; it was made during 1884.

Q. In summer?

41 A. It might have been in summer; it might have been in the fall.

Q. And, of course, if it had been imported before that you would have known?

A. No; I do not think I would have positively known it if anybody else had imported it.

Q. You represent the syndicate which owns these mines, do you not?

A. I do now to some extent. At that time there was no syndicate.

Q. And now you do these so-called manure salts?

A. No, sir; I do not represent only part of the manure salts.

Q. This article that is in suit is controlled by a syndicate in Germany?

A. It is manufactured.

(Objected to.)

The COURT. He may show the interest of the witness.

Q. It is controlled, or is it not, by a syndicate?

A. The manufacture of manure salt is in the hands of the mines of Germany.

Q. And you are their agent in this country?

A. I am.

Q. You have an interest in those mines?

42 A. I have not.

Q. Your firm?

A. No, sir; we have none.

Q. Other than that of the agency in this country?

A. Only the sale of their goods.

ADOLPH W. MILLER, having been duly affirmed, was examined as follows:

By Mr. PERKINS:

Q. What is your business?

A. Wholesale druggist.

Q. Of what firm?

A. Ashenbach & Miller.

Q. You are a lecturer in the University of Pennsylvania, are you not?

A. Yes, sir.

Q. Upon what subject?

A. Materia medica.

Q. How long have you been in this business in the way of handling chemicals?

A. Since 1853.

Q. Do you know what sulphate of potash is commercially known as?

A. Yes, sir.

43 (Competency of witness to speak of the trade designation objected to.)

Q. What is the business of Ashenbach & Miller?

A. Selling drugs.

Q. How long a time have you been in that firm?

A. About twenty-five years.

Q. Has that firm dealt in or handled the sulphate of potash known to trade as such?

A. To a very small extent; yes, sir.

Q. Do you know of your own knowledge with regard to sulphate of potash; I mean your own personal experience?

A. I have often handled it. I never manufactured it.

Q. Can you tell by looking at these articles whether they are or are not sulphate of potash?

A. I might be able to tell whether an article could not be sold as sulphate of potash. Pure sulphate of potash is a white salt similar to dozens of others, and it would not be very easy to recognize positively.

Q. Can you state whether those articles are or are not sulphate of potash, chemically known? (Handing samples to witness.)

44 (Objected to.)

Q. Commercially known as sulphate of potash?

A. I would not be able to sell either one of those under the name of sulphate of potash or potassium, as we call them.

Q. You say you have seen sulphate of potash and handled it frequently?

A. Yes, sir.

Q. Did you ever see sulphate of potash which in any way, shape, or form resembled that which you hold in your hand?

(Objected to.)

The COURT. Let him say whether that looks like sulphate of potash.

The WITNESS. This does not look like that which we sell as sulphate of potassium?

By Mr. PERKINS:

Q. What does that look like? (Handing bottle to witness.)

A. This may be sulphate of potassium. It certainly looks like a good commercial article. It is very hard. That is one of the characteristics of sulphate of potassium. I could not tell from the taste. By the

45 looks it resembles it, and that hardness is more characteristic to me than anything else. Few other salts make the same noise when you rattle them against the glass. (Cork removed from bottle and witness examined contents.) I think the probabilities are that this is crystal'ized sulphate of potassium. The druggists sell it more frequently in the powdered form. In the powdered form it is a plain white salt like dozens of others.

Q. How is that powder obtained?

A. Simply by mechanical means; pressure.

Q. From the salt?

A. Yes, sir.

Q. (Showing powder to witness.) What is that?

A. I think it is likely that this is sulphate of potassium. It may be so. I could not tell without a chemical examination, of course.

Q. What is sulphate of potash used for?

A. It is used as a purgative in medicine. It was formerly used in making Dover's powder.

Cross-examination by the DISTRICT ATTORNEY:

46 Q. Of course you do not mean to say without making chemical examination or test that this is sulphate of potassium?

A. I said it was likely. It might be so.

Q. About this thing that you very carefully opened and rattled, and so on, it might be almost anything, so far as you are positively able to say?

A. I know of nothing that has such a hard hit. It has the proper taste of sulphate of potash.

Q. You would not say positively one way or the other about it?

A. I could not absolutely swear to it.

Q. These, as far as you knew, in the trade might be sold as a sulphate of potash? (Referring to sample in question.)

A. I never heard it called that. I don't know anything about them.

Q. About the other uses that you speak of of sulphate of potash—besides the use of Dover's powders?

A. It was formerly used in making Dover's powders. It is not now. They use sugar of milk in place of it now.

Q. Besides that, what other use do you know of?

A. It is used as a purgative, the same as salts.

Q. How about alum?

47 A. I am not familiar with the constitutents.

Q. I presume that is not manufactured by a fertilizing establishment, so far as you know, or have you any knowledge of it?

A. Powers & Weightman make alum. I believe they do not make fertilizers.

Q. They use potash in the manufacture of alum, do they not?

A. It is one of the constitutents. I don't know anything about it.

Q. Any other besides that that you now think of? How about bichromate of potassa?

A. There is bichromate of potasssa, but it does not contain any alum.

Q. How is it as to sulphate of potash, is it used in the manufacture of that, if you know?

A. I do not know anything about the manufacture of bichromate of potassum.

Q. Can you think of any other article in which sulphate of potash is used?

A. I do not at the moment think of any other.

Q. Please name some other.

48 A. Our whole sales of sulphate of potash hardly exceed five pounds a year.

By Mr. PERKINS:

Q. I presume in the manure salts there must be large quantities used?

A. We do not sell them.

Q. You do know that that article presented to you would not pass to your trade as sulphate of potash?

A. No, sir; it would certainly be sent back by any druggist or physician to whom we sold it.

CHARLES M. STILLWELL, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. Where do you reside?

A. In Brooklyn, New York. My place of business is # 55 Philips street, New York.

Q. What is your business?

A. I am an analytical and consulting chemist. I am chemist to the New York Produce Exchange.

Q. How long have you been engaged as chemist?

A. Over twenty-one years in practice in New York city.

Q. Have you ever had any experience in analyzing of articles known as manure salts or high grade manure salts?

49 A. Yes, sir; I have analyzed a great many samples in the course of years.

Q. Are you acquainted with their appearance and general character?

A. I am acquainted with the general appearance of them.

Q. Please look at these samples before you and state whether you know what they are.

The DISTRICT ATTORNEY. Do I understand that this witness has made an analysis of these samples? Does he pretend that he can say what it is from its appearance?

A. From the general appearances they look like what is known as manure salts, but of course I would not say positively without an analysis. I simply judge by the general appearance.

By Mr. PERKINS:

Q. Are you familiar with the commercial name of drugs and are you familiar with the commercial name of that article?

A. Yes, sir; I know what it is called in the fertilizer trade.

The DISTRICT ATTORNEY. I do not understand the witness to be able to state what it is.

50 The COURT. He said what he would judge it to be.

The WITNESS. If it is manure salts I know what the general name is that would be applied to it.

By Mr. PERKINS:

Q. What is that name?

A. It would be called high grade manure salts. Sometimes other varieties or other qualities are called double manure salts. Sometimes they are called high grade sulphate of potash.

Q. How is that term applied high grade sulphate of potash?

A. It is applied to this class of articles to distinguish it from other potash salts used in fertilizers such as muriate of potash. It is a distinctive name applied to this class.

Q. Do you know what it is used for of your own knowledge?

A. Yes, sir; it is used for fertilizer purposes, as far as I know. I have used it myself and I have tested samples that were imported by dealers in fertilizers and that were sold to dealers in fertilizers and makers of fertilizers.

51 Q. Do you, from your experience, know of any other commercial use to which that article, manure salts, is applied?

A. No, sir; I never heard of any. I have never seen it used in any other way.

Q. Do you know what is commercially known as sulphate of potash?

A. Yes, sir.

Q. What is that?

A. That is a compound that is sold in two forms. One is the form of hard crystals and the other is in a fine white powder. If I order from a dealer in chemicals sulphate of potash I know what I expect to get. I do not get this article or anything like it.

Q. How is the powder that you speak of obtained?

A. That is obtained by grinding the crystals of sulphate of potash.

Q. The original form of the commercial, article, sulphate of potash, is in crystals, as I understand you, generally?

A. Yes, sir; generally in hard crystals.

Q. And then ground to powder?

A. Yes, sir.

52 Q. Look at those two samples there and state what in your judgment they are, if you know.

A. Of course, I am not positive about it; but this in its crystalline form and taste is very much like sulphate of potash. I do not say positively that it is.

Q. As near as you can tell without a chemical analysis?

A. I say it resembles what I should expect to get if I ordered sulphate of potash. (Referring to powder.) That is a white powder. I don't know what that is.

By the DISTRICT ATTORNEY:

Q. That powder has no name on it?

A. No, sir. The name does not guide me in this thing (referring to bottle).

By Mr. PERKINS:

Q. That looks like the powdered sulphate of potash?

A. Yes, sir; it looks like what you would get if you ground up this thing or any white salt.

Q. How is the sulphate of potash, the commercial article, obtained in commerce? That is, a *bi*-product from what source, or in what way is it obtained?

A. It can be obtained from a number of sources. It is a *bi*-product in the manufacture of tartaric acid, and it also can be made from the

53 treatment of *pu*rlash or from the residue of beet root molasses by treating with sulph'ric acid, or can be made by treating muriatic acid with potash or saltpetre with sulphuric acid. It can be made in a variety of ways, but the resulting product is made, that is, it is sulphate of potash, no matter what the sources may be.

Q. What is the form of the resultant?

A. In commerce, and I have known it for twenty-five years, the common form is in crystals; that is, hard crystals, or else in white powder, and the white powder is made by grinding up the hard crystals.

Q. So that, so far as your experience goes, the commercial sulphate of potash is always a crystal until it is ground up into this powder? It comes out as a crystal?

A. That is the general appearance of it. I do not remember that I have seen it in any other way.

Q. The sulphate of potash is a distinctive crystalline?

A. Yes, sir.

Q. Look at this article, which has been presented as the article in dispute, and state whether or not that, in your judgment, is the commercial article sulphate of potash?

54 A. It does not look like it. It certainly has not the crystal'ine structure of the sulphate of potash before it is ground.

Q. Did you ever have, in your experience, sulphate of potash before you in that form? I mean your commercial experience?

A. No, sir; I do not remember a single instance. Where I have bought it in powdered state it has always been whiter than this; more like that sample (referring to powder).

Q. You have heard Mr. Heller give the description of the manufacture of kainite or manure salt?

A. No; I think I was not here at the time.

Q. The commercial sulphate of potash, is that obtained as a *bi*-product in all instances?

A. No, sir; not in all cases. It is sometimes made directly by treating other chemical salts with sulphuric acid and crystal'izing the product.

Q. What are the uses of the commercial article sulphate of potash?

A. It is wholly for fertilizers.

Q. I mean sulphate of potash, the article the druggists speak about.

55 A. For medicinal uses. I never heard of any other except its use in the manufacture of alum. But not this manure salt.

Q. Do you know of any other use than that which you have testified to for the manure salt than fertilizer?

A. No; I never heard of any except simply for fertilizer.

Q. Did you ever hear of that article being used for medicinal purposes?

A. No, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. And your practical knowledge is confined entirely to the use in the laboratory? Is it or is it not?

A. You might put it that way. I sample and test this class of goods for fertilizer manufacturers.

Q. That is the manure salts?

A. Yes, sir. I am not a manufacturer myself.

Q. You do not know how they use these manure salts, do you, or are you familiar with the manufacture?

A. I have seen it put into fertilizer in the factory.

Q. They remanufacture it?

A. No; they do not. They mix it in with other compounds in the fertilizers.

56 Q. So that the result of that is the material that they sell as fertilizers, is it not?

A. The result of the mixture is. There is no change in the sulphate of potash.

Q. Describe, if you please, what that process is, if you know, of the manufacture of this article of fertilizer. Describe what is done with the manure salt you speak of by the manufacturer of the fertilizer.

A. It is mixed in with other compounds that he has manufactured, such as acid phosphate and dissolved bone black, mixed in with blood, or tankage, or fish scrap, or sulphate of am'onia, and then sulphate of potash high grade, or the double manure salt, whatever you may call it.

Q. The high grade of sulphate of potash?

A. Yes, sir; that and the manure salt, both meaning the same thing, are put in to furnish potash to the production.

Q. What percentage of the product of this manufacture is the high grade of potash?

A. That depends entirely on how much potash they want to have in the mixture.

57 Q. State about. I presume each manufacturer has his different ingredients?

A. Yes, sir.

Q. Take one hundred pounds. As far as you know, how much of this high grade of sulphate of potash would there be in that?

A. That is difficult to tell, because the quantities vary. They have all the way from a half per cent of potash in the mixture up to five and six or more per cent.

Q. Give me the names of these different manure salts as you know them.

A. The term manure salts, according to my experience, is applied to muriate of potash, to kaiserite and to kainite, and to what they call the double manure salt, and the high grade manure salt, or the high grade of sulphate of potash.

Q. So that, of course, if a man brought you a thing which he called manure salt, you would not know which one of those things you would get?

A. If he simply called it manure salt I would not know what it was. That is, I should expect to get what it is. I should expect it to be this article.

Q. Which article?

58 A. This so-called manure salt?

Q. This?

A. If that is the manure salt. That is what I should expect to get.

Q. Can you say whether or not it is a high grade sulphate of potash, just from looking at it?

A. No, sir; I have not claimed to.

Q. You would not know what that was? If he said that was a manure salt, you would say that might be any of these different things that you have just named?

A. No, sir; I say that these different articles are all classed under the general term of manure salts.

Q. That is the generic term?

A. Yes, sir; but the special term "manure salt" is applied to this article. If you speak of manure salt you do not mean muriate of potash or do not mean kainite, but mean this special brand.

Q. The high grade sulphate of potash?

A. Yes, sir; that is one name for it.

Q. What is the difference in the amount of potash contained in each one of these; the double manure salt, the kainite, and the high grade sulphate of potash?

59 A. The kainite has about twelve to thirteen per cent of potash; the double manure salt about twenty-seven per cent of good average, I should think.

Q. That is of pure potassium?

A. Pure potash; and muriate of potash has about fifty-one or fifty-two per cent. The high-grade sulphate of potash or high-grade manure salt has forty-seven or forty-eight per cent of potash.

Q. That is the highest of all, is it?

A. Yes, sir.

Q. You are familiar with the manufacture of alum, are you?

A. I have never seen it made. I only know from what I see in the books about it.

Q. Do you not know a high grade of sulphate of potash is used in the manufacture of alum?

A. I do not know that this article is. I know that they use sulphate of potash in making alum. I never heard of this being used in it.

Q. Do you not know that the other manure salts are used in the manufacture of alum; I mean those containing potash?

A. I think it is doubtful, because it would be too expensive to take a muriate of potash.

60 Q. Do you not know it is a fact that these articles are used in the manufacture of other articles?

A. Which articles do you mean?

Q. These manure salts containing potash.

A. No, sir; I never heard of it.

WINFIELD S. ALLEN, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your business, and where?

A. I am general manager for the L. M. Shoemaker Company, Philadelphia, manufacturers of fertilizers.

Q. How long have you been engaged there?

A. About fourteen years.

Q. Does your firm deal in manure salts, this article which has been designated as high-grade manure salts?

The DISTRICT ATTORNEY. High-grade sulphate of potash.

Mr. PERKINS. I understood the witness to say that was called high-grade sulphate of potash, but as one of the manure salts—that is, to distinguish it from another manure salt.

61 The DISTRICT ATTORNEY. "Manure salts" is the generic term. There is no disagreement about that.

Mr. PERKINS. He testified it was a specific term for that specific article.

Q. You say you have dealt in that article?

A. Yes, sir.

Q. For what purposes have you used that?

A. Manufacturing of fertilizers solely. I should say manufacturing of fertilizers, and we have sold some of them from time to time to manufacturers and to farmers around.

Q. You have sold it yourself to the farmers directly?

A. Yes, sir.

Q. You do not know anything about sulphate of potash commercially.

A. No, sir; I am not an expert at all.

Q. Under what name do you know that article that is before you? What do you buy it or sell it as?

A. I think we have bought this both as high-grade manure salt and also, I think, we have bought it as high-grade sulphate of potash—bought it under both terms.

Q. You have sold it on all occasions as fertilizers—used it or sold it?

A. Used it or sold it; yes, sir.

62 Q. Independent of which it was called?

A. Yes, sir.

Q. There is another salt, is there not, a muriate of potash, which is also used as manure?

A. Yes, sir; muriate of potash is also used for fertilizers.

Q. That is a different salt from that?

A. Entirely; yes, sir.

Q. This is called the sulphate to distinguish it from the other?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. You are with Shoemaker & Company?

A. M. L. Shoemaker.

Q. And, I think, Mr. Lennig is the President of that Company.

A. Mr. Charles Lennig is.

Q. He is also a member of the firm of Charles Lenig & Company.

A. I believe he is president of the Charles Lenig Company.

Q. Shoemaker & Company are simply manufacturers of fertilizers, are they?

63 A. Yes, sir.

Q. And Messrs. Lenig & Company are also manufacturers of chemicals, are they?

A. Manufacturers principally of chemicals.

Q. Under what name do you order this high-grade sulphate of potash?

A. Both as manure salts high grade, and also as high-grade sulphate of potash. I have bought them by both names.

Q. You have sold them, I presume, under both names, too?

A. Yes, sir.

Q. If you did not add the words "high-grade" to manure salts they would not know what you wanted?

A. That is hard for me to say.

Q. There are so many of these manure salts, are there not?

A. There are quite a number classed as manure salts.

Q. If you do not put something, either high-grade manure salt or high-grade sulphate of potash, you would not know what a man asked you for, or they would not know what you wanted?

A. They generally want the low grade. A low-grade manure salt is called low grade. That is just between this and high grade.

64 Q. What familiarity have you with other businesss than the fertilizer manufacture? Were you in the employ of Charles Lenig & Company, too?

A. No, sir.

Q. Are you familiar with their business?

A. Not at all.

Q. You are not familiar with their products, are you?

A. No, sir.

Q. In this process of manufacture of the fertilizer state what percentage of this high-grade sulphate or potash would be in the product that you use in making one hundred pounds of fertilizer; what percentage would there be of this high-grade sulphate of potash?

A. That would just depend on what you wanted your goods to analyze in actual potash. That runs very high. You might put in an average, probably—probably a high grade of manure for tobacco three hundred pounds of high-grade sulphate to a ton, or perhaps one-third. In a two thousand pound mixture there might be three hundred and thirty-three pounds of high-grade sulphate of potash—about one-sixth would be high-grade sulphate of potash or manure salts.

Q. Are you familiar with the manufacture of alum?

65 A. No, sir.

By Mr. PERKINS:

Q. You say you have sold this particular salt direct to the farmers?

A. Yes, sir; that is high-grade manure salt. We have sold to the farmers high-grade manure salt and dissolved bone and bone black and blood, &c., for the purpose of making their own fertilizers.

By the DISTRICT ATTORNEY:

Q. If they were to use this high-grade sulphate of potash on the ground without remanufacturing it it would destroy the crop, as a rule, would it not? Why is it they make it up in this way?

A. A great many people seem to think, and perhaps they are right, that they have a better result than by using the complete manure; that is, for instance, say all blood by itself or potash by itself.

66 ALFRED W. ANDRUS, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your business?

A. Importing wholesale druggist in New York City.

Q. For how long a time?

A. Twenty-five years.

Q. In what firm?

A. Past seventeen years Lazelle, Dolly & Co.

Q. Do you know an article commercially known as sulphate of potash?
A. Yes, sir.
Q. Do you see among the samples there before you any article resembling sulphate of potash?
A. (Referring to bottle.) That looks like the sulphate of potash crystalline.
Q. Commercially and medicinally prepared?
A. Yes, sir; medicinal preparation.
Q. What is the white powder?
A. That has the appearance of what I have known as powdered sulphate of potash.
Q. Do you use that article; that is, the sulphate of potash?
A. Yes, sir; we use it medicinally, or rather sell it as a medicine.

67 Q. How is it generally sold?
A. It is mainly sold in the powdered form.

Q. How many varieties do you know of that commercial article, sulphate of potash?
A. In our own business as dealers in medicine, the crystal and powdered only.
Q. How many grades are there of that crystal?
A. I only know of the one grade.
Q. Look at that sample before you and state whether you have ever bought or sold an article like that under the head of sulphate of potash? (Referring to sample in question.)
(Objected to.)
Q. Have you ever bought and sold an article similar to that as the sulphate of potash?
A. I am not aware that we ever did.
Q. Would you accept that article as a sulphate of potash?
A. No, sir; not as we understand it.
Q. I mean the commercial article, sulphate of potash?
A. No, sir; we should not.
Q. The sulphate of potash to which you have referred, you say is used only for medicinal purposes?
A. That is all that I know of.

68 Cross-examination by the DISTRICT ATTORNEY:

Q. You are entirely in the drug business?
A. Yes, sir.
Q. I presume you are familiar with the "Oil, Paint, and Drug Reporter?"
A. I am.
Q. That is one of the leading trade papers?
A. Yes, sir.
Q. Of course, it is not a paper which generally misuses technical terms in business, is it? How is that?
A. I think that is possible.
Q. What is its reputation in your trade; one of the best newspapers?
A. It is one of the leading and most prominent drug papers we have.
Q. What are the chemical people in this city whom you know?
A. Powers & Weightman, Rosengarten & Sons.

Q. And Lenig & Sons?

A. Yes, sir.

Q. If they knew this article, and deal in it, as sulphate of potash, would you still hold to your opinion that that was not a name in the trade by which that was bought, sold, and used?

69 A. If I ordered sulphate of potash——

Q. I have not asked you whether you have ordered it, or not; please state whether your opinion as to whether that is known in the trade would be modified by the fact that Powers & Weightman and Lenig & Sons know that article as sulphate of potash?

(Objects to. Question withdrawn.)

Q. You have made no analysis of this (sample in bottle)?

A. No, sir.

Q. You do not really mean to tell us from the appearance, or the way it shakes, that you could swear that was sulphate of potash?

A. I could not swear to it, because it has the appearance of other crystalline salts.

Q. I have no doubt you know hundreds?

A. No, I do not know hundreds.

Q. This powder, without an analysis of that, would you pretend to tell this jury that that was sulphate of potash?

A. I could not answer, because it is like a good many other white powders.

By Mr. PERKINS:

Q. Suppose that article was shown to you, could you tell any-
70 thing more about that than the article in the bottle, as to what it was? (Handing another sample to witness.)

A. No, sir; I could not.

Q. But, if you were told that that particular article was bought at Howers & Weightman's as their sulphate of potash——

A. I would believe it.

HORACE L. OMSTEAD, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. Where is your place of business?

A. 73 Williams street, New York. I am with E. Mirk & Company.

Q. How long have you been there?

A. I have been with them about two years and a half.

Q. What was your business before that?

A. Retail druggist.

Q. For how long a time?

A. Twelve years; about fourteen years.

Q. E. Mirk & Co. are in what business?

A. Importers of chemicals.

Q. Do you know an article bought and sold in the market bearing the commercial name of sulphate of potash?

71 A. I do.

Q. Do you see any samples before you which you would say were, in your judgment, sulphate of potash, which look like it?

A. I would say either of these were. (Referring to samples.)

Q. What would you say of that sample? (Handing sample to witness.)

A. That is, without doubt in my mind, sulphate of potash. Without, of course, analysis. If it came to me labeled as sulphate of potash I would accept it as such.

Q. From appearances, and guided by your experience of fourteen years, would you say, as well as those articles, the articles in the bottle were sulphate of potash?

A. Yes, sir.

Q. In what different forms or shapes do you know the commercial article, sulphate of potash?

A. There are but two, the crystalline and the powder.

Q. Are there not varieties of the crystalline?

A. We carry two.

Q. What are those varieties?

72 A. One known in our house as a pure salt, and the other is a chemically pure salt.

Q. Explain to the jury what you mean by that.

A. This salt here is, as is labeled, an absolutely chemically pure salt as near as it can be had. There is another quality, a lower quality, which we handle, which is not required to be absolutely chemically pure, which answers all the pharmacopia purposes, and is a pure salt. They are identical in appearance, and on chemical analysis there would not be much difference.

Q. Look at that article in the tin box and state whether you recognize that as sulphate of potash.

A. I do not. I never saw it, except once before in the court room.

Q. You do not know anything about it?

A. No, sir.

Q. If that salt was given to you as sulphate of potash would you accept it as such?

A. Decidedly not.

Cross-examination by the DISTRICT ATTORNEY:

Q. Did I understand you to say you were in the wholesale drug business?

A. No, sir; chemical entirely.

73 Q. What quantity do you buy or sell of this which you call sulphate of potash?

A. There is a very little of it sold, comparatively. I am not prepared to give the exact sales, and compared with other chemicals it is very light.

Q. About how many pounds do you think?

A. I could not tell you.

Q. A ton or nearly a ton in a year?

A. I could not tell you whether we sell a ton or five tons, inasmuch as we import it only in small packages. I doubt very much whether we do.

Q. About how much in a package; what sized packages?

A. We import it in all sizes, up to pounds.

Q. All less than pounds?

A. Quarters, halves, and pounds.

Q. Covering what period; a year?

A. I do not quite understand it.

Q. Would it have aggregated five pounds in a year, taking it altogether?

A. Very likely.

Q. More than that?

A. Very likely.

Q. Ten pounds? I mean about what; I do not mean to pin you down. Give us an idea.

74 A. I think you are pinning me down.

Q. This is five hundred pounds?

A. Five hundred pounds would be a very extraordinary shipment.

Q. One that you have never heard of in your experience?

A. One that I have never heard of; that is, sulphate of potash as I recognize it.

Q. What do you know about manure salts; do you know them at all?

A. I know nothing about them.

Q. You know nothing about the terms that are applied to manure salts?

A. Nothing about them.

Q. Then, so far as you know, there may be an article bought and sold and used in the trade as sulphate of potash and you not know it?

A. Precisely.

By Mr. PERKINS:

Q. If you saw that article, you say you would not accept that as sulphate of potash?

A. Certainly not.

Q. You never saw that in the trade?

A. I never saw that in our trade.

75 By the DISTRICT ATTORNEY:

Q. Not for your purposes you would not accept it?

A. No, sir.

Q. What is this article that you know as sulphate of potash used for, so far as you know?

A. It is only as a purgative. It used to be used commonly, largely, in Dover's powders. That is about the only use I know of.

Q. None, so far as you know, for the manufacture of fertilizers?

A. No, sir. I do not know anything about the manufacture of fertilizers.

WILLIAM J. WILLIAMS, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. Where are you employed and by whom?

A. I am chemist of the Keystone Chemical Company.

Q. Where has that corporation its office or manufactory?

A. Their office is No. 3 South Front street, and their factory is over on the Jersey side, in South Camden.

Q. Did the Keystone Chemical Company purchase this special
76 importation from the "Cuba" from Messrs. Heller, Hirsch & Company?

A. We did.

Q. This is the bought and sold note accepted by the Keystone Company? (Handing note to witness.)

A. Yes, sir.

Q. What did you do with this shipment after you received it?

A. Mixed it up with other materials and made a fertilizer.

Q. Mixed this particular salt up?

A. Yes, sir.

Q. Have you had any experience in this particular product in dispute here?

A. This high-grade manure salt?

Q. Yes.

A. No. We have had one or possibly two shipments two or three years ago. That was the first experience I had with it.

Q. And then this last shipment?

A. Then this last shipment.

Q. This particular shipment was used expressly for fertilizing purposes?

A. Expressly and solely for fertilizin*f* purposes.

Q. You sold it as such?

A. Yes, sir.

77 Q. You are by profession a chemist?

A. Yes, sir.

Q. How long have you been a chemist?

A. In the fertilizing business seventeen years. In other chemical manufactories three years more; altogether about twenty years.

Q. Do you know anything about the sulphate of potash of commerce?

A. Certainly I do, because I use it in the laboratory for purely scientific work—chemical experimenting in*n* the laboratory.

Q. Do you see any samples there on the table which, in your judgment, resemble the sulphate of potash?

A. Yes, sir. That looks very like the ground sulphate of potash (referring to powder), and speaking prima facie, I should say that label on that bottle was a true label, and this is sulphate of potash.

Q. What would you say as to this article as compared with crystals in that bottle?

A. (After comparing). To all appearances they are very much the same thing.

Q. From your experience, would you say they did resemble the sulphate of potash commercially so known?

78 A. Certainly. They are so like it. If I ordered sulphate of potash and this came (bottle), I should take it for granted that was sulphate of potash.

Q. What is the peculiarity in the form of commercial sulphate of potash?

A. Crystalline salt.

Q. Always?

A. Always a crystal. It may be a powdered crystal, but always a crystal.

Q. The powder is what?

A. Is a crystal reduced to powder mechanically. It is always a crystalline form.

Q. Look at that article in the tin box and state whether or not, from your examination of that, you would say that is what you would know as a crystalline salt.

A. Certainly not.

Q. That would not be known as a crystalline salt?

A. That is decidedly not a crystalline salt, as far as my experience goes. I should refuse to believe it was a crystalline salt if I was told so.

Q. Would you or would you not accept that article in that box as the commercial sulphate of potash?

A. I would certainly return it and say that was not what I ordered as sulphate of potash.

79 Q. What are any of the uses of commercial sulphate of potash?

A. It is used medicinally. It is used for making alum, and an impure variety is used in the fertilizing business under another name.

Q. What is the name?

A. Manure salt—high-grade manure salt.

Q. What is that article?

A. I could not tell you exactly what it is from looking at it. It looks very like high-grade manure salt.

Cross-examination by the DISTRICT ATTORNEY:

Q. How many manure salts do you know of? What are the names of the different manure salts that you know of?

A. There is low-grade manure salt, there is high-grade manure salt, and there are two varieties of high-grade manure salts.

Q. What are they?

A. Muriate of potash is a high grade of manure salt, and another kind of high-grade manure salt is sulphate of potash, and impure sulphate of potash.

Q. Is not this the sulphate of potash you now speak of (referring to sample)?

80 A. That is the high grade of manure salt known as sulphate of potash to distinguish it from the muriate and for no other reason.

Q. To what other use, that you know of, is sulphate of potash put?

A. Making alum.

Q. Anything else?

A. You mean the *crusy*'als?

Q. Yes.

A. That is used medicinally.

Q. Have you ever seen the high-grade sulphate of potash as white in color as this powder here?

A. No, sir. I have not seen a sample as white as that of the high-grade manure salt. I do not think it could be made so.

Q. The high-grade sulphate of potash that you speak of in this, is it often b*al*cker or darker in color than that is, or sometimes whiter?

A. My observation is, it varies little from what we see here—scarcely perceptible. You might notice the difference if the two samples were side by side, but otherwise I do not think the difference could be told.

Q. For how long have you known this article in the trade?

A. I have not handled this article in the trade until about four years ago.

81 Q. You have given orders for it to Heller, Hirsch & Co.?

A. I personally have not, but our president has, acting for me.

Q. You always order high-grade manure salt, or high-grade of potash?

A. No; we would order it as high grade manure salt.

Q. When you saw this invoice and it only said manure salt, you did not know what you were getting, did you?

A. No, I did not until I used and analyzed it.

Q. If you wanted to get the high-grade sulphate of potash, you would have asked for that, or they would not have known what to deliver?

A. No; had I written the order myself, I would have written it in this form, "Send me so many tons of high-grade manure salts, but I want the suphate, not the muriate."

Q. For how many years has this term been used in the trade, so far as you know?

A. I believe that term has been used in the trade before this article came into knowledge at all. It has been used ever since this article came into knowledge of the world.

Q. That was in 1884?

82 A. I do not know. I could not fix the date. No, it was before 1884.

Q. Mr. Heller says it was 1884.

A. I had knowledge of it in England before I came here.

Q. For how long a time have you known this article that has been identified here as being a double manure salt; do you know that at all?

A. Yes, sir. I have never handled that, but I know it is sold in the trade as fertilizer.

Q. For how long a time have you known that?

A. I do not know; I have probably known it four and possibly eight or nine years.

Q. In this country?

A. I have only been in this country four years.

Q. The manufacture, that you speak of, of these fertilizers, you have a certain process through which this is put, have you not?

A. No; we do not put it through any process at all beyond mixing it with other articles. That is not the process.

Q. What do you call that?

A. We simply mix it; that is all.

Q. The result of that mixture is this product that you sell as fertilizer?

A. Yes, sir.

83 Q. What proportion of the result of your mixture is sulphate of potash; take one hundred pounds?

A. It may vary from less than one pound up to ten or twelve, according to what we want to produce.

Q. As a rule?

A. As a rule, in a hundred pounds finished fertilizer we would put five or six pounds of this manure salt.

By Mr. PERKINS:

Q. You never saw the invoice that Mr. Carr just showed you?

A. I do not think I saw it.

Q. When you got this note with the words "high-grade manure salt," you would know very well what it was; that is what you bought?

A. High-grade manure salt; yes, sir. I should expect it to be that. The invoice does not come into my department very often.

Mr. Perkins offered in evidence bought and sold note by Heller, Hirsch & Co. to the Keystone Chemcical Company, accepted by them for this particular shipment.

JAMES E. HELLER, recalled.

By Mr. PERKINS:

84 Q. Look at these three samples and say where you got them, why you got them, and what you asked for?

(Objected to. Objection overruled.)

A. This is a sample I obtained in Powers & Weightman's office at their factory. I asked the gentleman there for sulphate of potash. I wanted to get a sample of their sulphate of potash as they made it, and he went out and sent a man and told him to bring a sample of sulphate of potash, and he brought it in and handed it to me and marked it sulphate of potassium crystal. He brought it to me and that is the sulphate of potash they make and sell.

Here is a sample I bought from Shoemaker & Co. I went in there and asked for a quarter of a pound of sulphate of potash in crystals, and a gentlemen went upstairs and got me this package, and he marked it sulphate of potash crystals, and I paid him fifteen cents for the quarter of a pound.

Here is a sample which I bought in Washington, D. C. I went into a drug store and I asked him for sulphate of potash in crystals.

(Objection renewed. Objection sustained.)

The district attorney asked that the above testimony of Mr. Heller be stricken out.

The court directed that it be so stricken out.

Plaintiff closed.

85 *Evidence on behalf of Government.*

TUESDAY, *April* 15, 1890—10 *a. m.*

Present, Messrs. Perkins and Jones, for plaintiff; John R. Read, esq., U. S. attorney, and W. W. Carr, esq., assistant U. S. attorney, for Government.

NICHOLAS LENIG, having been duly affirmed, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You are a member of the firm of Charles Lenig & Sons?
A. I am.
Q. What business are you in?
A. Manufacturers of chemicals and importers and dealers.
Q. For how many years have you been engaged in that business?
A. For the last twenty-four years or more—twenty-five years.
Q. How long have you yourself known of the business?
A. I have been engaged for that length of time.
Q. For how long has your firm?

A. I should think for upwards of fifty years. The firm was founded in 1819.

86 Q. You are one of the largest firms in this country, are you not?

A. Yes, sir.

Q. Do you know an article, sulphate of potash?

A. I do.

Q. Have you seen the sample that is involved in this case [handing sample to witness]?

A. I have.

Q. Are you familiar with that article?

A. I am.

Q. To what extent have you bought and sold that in your business?

A. I have imported quite a number of parcels; I have imported it quite frequently.

Q. For how many years past?

A. I should judge our first importation was in 1885.

Q. Please state under what name that article is bought, sold, and used in the trade.

A. I have never heard any other name than sulphate of potash.

Q. You are familiar with the syndicate and the terms used by the syndicate from which the article comes?

A. Yes, sir.

Q. What is the extent of your knowledge of their business; I
87 mean the German syndicate which controls or owns those mines?

A. How do you mean?

Q. Have you had much or little dealings with them?

A. We have been dealing with them many years, with the syndicate as long as it has been formed and with some of the firms upwards of thirty years.

Q. Do you know under what name they sell that article?

A. They sell this as high grade of sulphate of potash.

Q. Have they circulars and do they issue circulars from the syndicate? (Objected to as immaterial.)

The DISTRICT ATTORNEY. I propose to show by this witness that the people who sell this article have for it a certain name and that that name is set out in circulars issued by the people who sell this article, and that the name is not, as the plaintiff has said, but as the witness and the Government says, sulphate of potash.

(Objection sustained. Exception for the Government.)

Q. You are familiar with the plaintiff's firm, are you?

A. I am; yes, sir.

Q. Have you had any dealings with them in the purchase of this article or similar importations to this?

88 A. I have.

Q. Under what name have you offered to buy, or have you bought, this article in dealing with the plaintiff's firm?

A. Do you mean in corresponding?

Q. Yes.

A. We have always corresponded with them as sulphate of potash testing from ninety to ninety-five to ninety-eight per cent.

Q. Have you received letters from the plaintiff's firm?

A. I have.

Q. Have you them in your possession?

A. I have.

Q. Please produce them. (Witness produced letters.)

Q. These letters are dated Heller, Hirsh & Company, New York, February 6th, 1889; telegram, February 12, 1889, signed Heller, Hirsh & Company; letter February 13, 1889; letter February 12, 1889; March 28, 1889, and April 26, 1889. You know the contents of these letters?

A. Yes, sir, pretty thoroughly.

Q. Please state whether or not the transactions referred to in them concern an article similar to that of which the sample is before you.

89 A. It did. In fact, as far as I recollect, I think they mention in the letters the samples; they have sent us samples.

Q. Those samples were of the same article as that before you or a different article?

A. No, sir; they were similar to that article. In fact, almost exactly like it, as far as I can recall them.

Q. You are familiar with the Oil, Paint & Drug Reporter, are you not?

A. I am.

Q. It is the leading newspaper in the trade, is it not?

A. I believe it is considered so.

Q. Of the number dated April 2, 1889, New York, upon page 46, there is a certain list of chemicals, which I show you. Please state whether or not the article there mentioned as sulphate of potash is or is not similar to the sample here in suit.

Mr. PERKINS. Read the heading of the list showing it is for chemical fertilizers, and then let it all go in.

The DISTRICT ATTORNEY. "Am'onias, potashes, and fertilizing chemicals."

A. Do you mean the article here mentioned as sulphate of potash?

A. Yes, sir.

90 Q. State whether that article mentioned there as sulphate of potash is or is not the article that is involved here in this suit?

Mr. PERKINS. If you know of your own knowledge what the editor of that paper intended, all right.

A. Knowing nothing to the contrary, I should judge it was that article.

By the COURT:

Q. You say "knowing nothing to the contrary." What do you mean by that?

A. If I had not positive evidence to the contrary I should say it was this article.

Q. Do you know anything about it at all?

A. As to the article in the paper?

Q. Yes.

A. No, sir; I do not claim to.

By the DISTRICT ATTORNEY:

Q. Let me call your attention to this, "Sulphate of potash basis ninety per cent," and look at the prices and state whether or not they guide you or are able to guide you in stating whether or not it is the same article.

(Objected to.)

The COURT. I do not see how it is possible to ask him.

91 (Objection sustained. Exception for the Government.)

By the DISTRICT ATTORNEY:

Q. As to the use to which this article that is before you is put, what do you know about that?

A. It is used in connection with fertilizers as an ingredient in making what, I believe, the fertilizer-manufacturers call a perfect fertilizer. It is largely used in the manufacture of alum; it may be largely used in the manufacture of carbonate of potash.

By Mr. PERKINS:

Q. The question is what you know it to be used in.

A. I know it to be used in the manure; I know it is used in the manufacture of alum and I know it is used in the manufacture of fine chemicals in this country.

By the DISTRICT ATTORNEY:

Q. Any other uses?

A. I do not recollect any at the present moment.

Q. What do you use it for in your business?

A. We use it for the manufacture of alum.

Q. You do not manufacture fertilizers at all?

A. No, sir. We did, but have not done so for many years.

Q. Issue of Oil, Paint & Drug Reporter shown witness offered in evidence.

92 Cross-examination by Mr. PERKINS:

Q. Do you manufacture what is known as the commercial sulphate of potash?

A. Will you show me what is known as the commercial potash?

Q. You manufacture such an article as that [bottle], which the experts yesterday testified was in their judgment the sulphate of potash as known to commerce, powdered and crystal; and this other sample, which was placed in evidence as having been purchased at Powers & Weightman?

A. I wish to differ from the gentleman saying that is a potash known to commerce. It possibly may be in a small way, but I should call that a medicinal chemical.

Q. What is that medicinal chemical?

A. Sulphate of potash chemically pure, this is marked.

Q. Then it is chemically pure sulphate of potash?

A. Yes, sir.

Q. And is so known, is it?

A. Certainly. I should presume so. It is so marked. I do not say that this is sulphate of potash. You tell me it is.

Q. You would call that a chemically pure sulphate of potash?

93 A. It is so marked. I would not call it anything without analysis.

Q. Do you know anything about the appearance of sulphate of potash?

A. Yes; I do.

Q. And chemically pure sulphate of potash?

A. I can judge about what it should look like.

Q. Do you deal in it at all?

A. No, sir. We do not deal in medicinal chemicals.

Q. How long have you been using this article in the tin box?

A. I did not say that we used that article.

Q. I do not mean that identical article. I mean that which you say you have bought?

A. Sulphate of potash?

Q. Which you say you have bought from Messrs. Heller, Hirsh & Company, and which you said that article was in all respects like, and which you believed to be the same article?

A. That I bought from Heller, Hirsh & Company we did not use ourselves; we sold it to manufacturers of fine chemicals.

Q. You do not know what it was used for of your own knowledge?

94 A. No, sir; I do not.

Q. Then your statement that it is used in the manufacture of fine chemicals is based upon the fact that you sold to the manufacturers of fine chemicals this article?

A. Yes, sir.

Q. How long have you been using this high grade sulphate of potash, as you call it, or manure salts, for the purpose of making alum?

A. We have never used manure salts that I am aware of.

Q. How long have you been using the high grade sulphate of potash which you say you have purchased and imported in the manufacture of alum?

A. We manufacture our own sulphate of potash. What we import we import for sale.

Q. What you bought of that?

A. Yes, sir.

Q. You have never manufactured alum out of that?

A. No, sir. If I did not make it myself or I could get it cheaper, I would use that.

Q. Why do you not use it?

A. Because I can make my own cheaper.

Q. Do you know of your own knowledge of that article being actually used in the manufacture of alum?

A. I have never been in the works of the other alum-manufacturers.

95 Q. Do you know of your own knowledge of any use for that article?

A. Yes, sir; I do.

Q. What it is.

A. The manufacture of alum.

Q. Of your own knowledge?

A. Yes, sir. When I say my own knowledge, I would use it myself individually, if I couldn't make it cheaper.

Q. You have not used it?

A. No, sir. But that does not say I would not. I am talking of what can be done with that article.

Q. I want to know what is done. I ask you whether you know of your own knowledge of that article having been used in the manufacture of alum? Of your own knowledge?

A. No; I can not say that I do.

Q. You say you do not use it because you can not use it profitably. You would use it if you could use it as cheaply as you can the other?

The DISTRICT ATTORNEY. He said he made his own sulphate of potash.

96 Mr. PERKINS. Because he said he could do it cheaper.

Q. State whether you know, of your own knowledge, of any use to which that salt is applied for which it is used.

A. Yes, sir.

Q. Of your own knowledge; have you ever used it?

A. No; I have not. I have made a salt that looks exactly like it.

Q. I do understand you to say you would use it in the manufacture of alum if you could use it profitably?

A. I could use it profitably.

Q. But you have not used it?

A. I have not; no

Q. Did you not say a moment ago that you did not use it because you could make your own sulphate of potash cheaper?

A. More profitably. But I could use that profitably.

Q. Do you know what the character of that high grade sulphate of potash is? Do you know how it is made or what it comes from?

A. Yes, sir.

Q. Do you know what it is?

A. Yes, sir; sulphate of potash.

Q. How is it made?

97 A. It is made from the salts that they get at Stasford and kindred mines—kindred salts they get from the mines.

Q. Do you how it is made?

A. I can not say. A great many different works have different processes; some have one and some the other.

Q. Do you know whether it is a mechanical or chemical process? Do you know whether this is reached on a chemical or mechanical process?

A. I could not say. It may be reached by one or the other.

Q. Can it be produced? Is that high grade sulphate of potash produced by a mechanical or by a chemical process?

A. I could not say. I would not undertake to say without seeing the process. Of course, these salts can be produced both ways.

Q. Do you know how the sulphate of potash that you use is produced?

A. Yes, sir; I do.

Q. How is it produced?

A. That is my business; I do not care to tell.

Q. I do not care to know your formula; but is it produced chemically or mechanically?

A. It is produced chemically.

Redirect examination by the DISTRICT ATTORNEY:

98 Q. You know the trade usage of this, although your individual use has not been for the manufacture of alum; what is the trade usage at large for this article?

Mr. PERKINS: The witness has already stated he has never known of its use; he simply sold it to other persons. He has not said he knew the trade.

A. As a chamical manufacturer we can generally know what an article is used for. Whether it is used for that in this country or elsewhere it is not for me to say.

By the DISTRICT ATTORNEY:

Q. You know the trade usage for which that article is put?

A. Yes, sir.

Q. What is the use to which the trade—I don't mean you individually, but the trade—put this article, this sulphate of potash?

A. How do you mean trade?

Q. The trade at large. Other chemical manufacturers.

A. I have no doubt they can use it——

(Objected to.)

The WITNESS: They can use it for am'onia, silicate of potash, carbonate of potash, bichromate of potash, and any other potash salts.

99 Q. How about alum?

A. And alum.

Q. Do they so use it or do they not, so far as you know? I mean the trade usage.

A. I should judge they do.

Mr. PERKINS. I ask your honor to strike out the testimony as to what the witness judges.

Q. The mines from which this article comes, where are they?

A. In the neighborhood of Saxony, near Stassfurt and Ascherleben, and quite a number of localities there.

Q. What other articles besides this sulphate of potash comes from those?

A. Muriate of potash, manure salts, kainite and kaiserite.

Q. Muriate of potash also comes from that neighborhood, does it not?

A. Yes, sir.

Recross-examination by Mr. PERKINS:

Q. You have no personal knowledge, you say, of the uses to which this is put?

A. Except as chemist; the uses to which it can be put.

Q. Not what it can be put?

A. I presume it is put, for the chemists would be very foolish if they did not put it to those uses.

Q. You only know what it can be put to chemically?

A. Yes, sir.

100 HAMILTON H. SALMON, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in New York?

A. No, sir; in Brooklyn.

Q. You are the head of the firm of H. H. Salmon & Company?

A. I am.

Q. How long has that firm been in existence?

A. A great many years; I do not know.

Q. About how many?

A. My father was in business fifty years before I was in it at all.
Q. How long have you yourself been in business?
A. Fourteen years.
Q. What is the business?
A. Importation of potashes.
Q. From what district?
A. Germany, Stasford.
Q. And you do what with them here in this country? Do you manufacture or sell?
A. We sell them.
Q. You have knowledge of the trade terms for potashes, have you?
A. Yes, sir.
101 Q. You have knowledge alsoof the article known as sulphate of potash?
A. Yes, sir.
Q. Please look at this and state under what name is that article bought and sold and used in the trade, if you know. (Sample handed witness.)
A. I would call that high grade sulphate of potash.
Q. How does the trade call it?
A. Just in that way.
Q. Is it bought under that name or not?
A. Yes, sir.
Q. You are familiar with the name as used abroad?
A. Yes, sir.
Q. Is that the article that you import yourself?
A. We have not imported it the last few years.
Q. You have at one time imported it?
A. Yes, sir.
Q. Under what name was it imported?
A. Sulphate of potash.
Q. For how many years, if you can state, so far as you know, has this name been given to this article?
A. I have never heard it called anything else until within the last year or two.
Q. As to the uses to which this article is put, what do you know
102 of them? the trade usage, I mean. You have said that you only sell it.
A. Yes, sir.
Q. Have you knowledge of the trade usage?
A. Only from our buyers telling me.
Q. You sell the article?
A. Yes, sir.
Q. What is the use to which your customers put this?
(Objected to.)
Q. The trade, then?
A. The trade use it in the manufacture of alums, also in the manufacture of fertilisers, and also in the manufacture of other high-grade chemicals.
Q. What chemicals are those?
A. The Baltimore Chrome Works use it in the manufacture of bichromate of potash.

Mr. PERKINS. Of your own knowledge? I object. The witness is not testifying of his own knowledge with regard to what his customers or other people use this article for.

The WITNESS. I merely have testified what they have told me.

(Mr. Perkins objected, and asked that it be stricken out.)

Q. As to any other use to which this article may be put?

(Objected to.)

103 (Objection overruled. Exception for plaintiff.)

Q. To what other use does the trade put this article in the manufacture of chemicals?

A. I do not know of any other use.

Q. You are familiar with the Oil, Paint, & Drug Reporter, are you?

A. Yes, sir.

Q. And you have noticed the column of articles used, I presume, in the trade under the head of chemicals, have you?

A. Yes, sir.

Q. Please say whether or not the article that is before you here is mentioned in that list of articles named?

(Objected to. Objection overruled.)

Q. Look at that list and state whether or not there is the name there under which this article is bought, sold, and used?

(Objected to. Objection overruled. Exception for plaintiff, for the reason that the witness has not mentioned this article before.)

A. Yes, sir.

Q. Under what is the name there?

A. Sulphate of potash.

Q. Read the line.

A. "Basis ninety per cent, 2.40 and 2.45."

104 Q. What does 2.40 and 2.45 mean?

A. That means that on a basis of ninety per cent, 2.45 per hundred pounds on the basis of ninety per cent, all over that would be charged pro rata.

Q. I understand that name is that article before you?

A. I should judge so; yes, sir.

Mr. PERKINS. I move the answer be stricken out.

The WITNESS. Nobody could say that that was sulphate of potash unless it were analyzed.

Cross-examination:

By Mr. PERKINS:

Q. Have you ever imported that particular salt?

A. Our firm have; yes, sir.

Q. Since you have been in it?

A. No, sir.

Q. When?

A. Five or six years ago.

Q. Did you ever make more than one importation?

A. I think several of them.

Q. Do you know of your own knowledge?

A. Not without referring to the books.

Q. What were the sizes of these importations?

A. They were in fifty-ton lots.

Q. Within what time have you made your last importation?

105 A. As I say, four or five years ago. About five years ago.

Q. You have not imported any within the last four or five years?

A. Not since that time.

Q. You do not speak now of your own knowledge, you were not in the firm, you say, at the time of that importation?

A. Not as a partner.

Q. Were you there?

A. Yes, sir.

Q. Was it not the double manure salt that you imported at that time?

A. We imported that also.

Q. That article you say you call high-grade sulphate of potash?

A. Yes, sir.

Q. It is to distinguish it from muriate of potash, is it not, and other fertilizing substances?

A. It is to designate it as a sulphuric form of potash.

Q. And it is to distinguish it, is it not, from the muriate of potash which comes in as a fertilizer?

A. The name distinguishes it of course.

Q. It is named that in order to distinguish it.

A. Certainly.

106 Q. Have you heard that called manure salts?

A. I have.

Q. Do you know its purposes?

A. I do, sir. From hearsay; yes, sir.

Q. That which you imported; what did you do with it?

A. Sold it to the Baltimore Chrome Works.

Q. That is all you know of that?

A. Yes, sir.

Q. You have not dealt in it for the last four or five years?

A. No, sir.

Q. Have you made any sales of it whatever within the last four or five years?

A. No, sir.

Q. And you only made, you say, two or three importations?

A. Yes, sir.

Q. And the account of those importations was about five-ton lots?

A. Fifty-ton lots.

Q. Do you deal in sulphate of potash? What was testified here yesterday as being sulphate of potash of commerce?

A. That? (Referring to bottle.)

Q. Yes.

A. No, sir.

107 Q. You do not deal in it?

A. No, sir; never heard of it before.

Q. Why did you not continue to import this high grade of potash?

A. Because when we got the agency for the muriate of potash syndicate they did not wish us to go into the sulphate of potash business, and restricted us.

Q. When did you get that agency?
A. Four years ago.
Q. What is the use of muriate of potash?
A. It is used in the manufacture of fertilizers.
Q. How does it compare in value with this, cheaper or dearer?
A. About thirty per cent cheaper.
Q. Then the muriate of potash would undersell this article in the market with the duty on it?
A. Yes, sir.
Q. You are the agent for the muriate of potash syndicate?
A. No, sir.
Q. Do you not know as a fact that you have not imported any of that salt within the last five years; that Messrs. Heller, Hirsch & Company have been the agents of that syndicate for eight years?
A. No, sir; the syndicate has not been in existence that time.

108 By the DISTRICT ATTORNEY:

Q. How many tons do you import of the muriate of potash within a year, say?
A. About thirty thousand tons.

HENRY BOWER, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?
A. Yes, sir.
Q. In what business are you?
A. Manufacture of chemicals.
Q. Connected with what company?
A. Connected with the Amonia Company of Philadelphia, and the Kalion Chemical Company.
Q. Where are its works?
A. There are two stores on Gray's Ferry road, one at Twenty-eighth street and the other at Thirty-first street.
Q. How long have you been in this business?
A. About twenty-five years.
Q. You are familiar with the terms used in the chemical trade?
A. Yes, sir.

109 Q. State whether or not there is an article bought, sold, and used in the trade under the name of sulphate of potash?
A. There is.
Q. Look at this sample, and state under what name that is bought, sold, and used in the trade.
A. We buy that as sulphate of potash, if that is sulphate of potash. (Examining sample.)
Q. Assuming, of course, that that is the sulphate of potash?
A. Yes, sir.
Q. For how many years has that name been given to it?
A. To my knowledge, we have bought it for the last two years.
Q. Prior to that have you any knowledge as to its name?
A. Sulphate of potash. I am only familiar with it for the last two years.

Q. What is the use to which it is put?

A. In our operations we use it for making carbonate of potash and bichromate of potash.

Q. Do you know of any other use to which the trade puts it?

A. It is used in the manufacture of alum. I have now stated three very large uses. The others are comparatively, I take it, smaller,

110 but it is used largely in the arts, sulphate of potash, in various ways.

Q. And used by persons who manufacture chemicals or only by persons who manufacture fertilizers?

A. I am now speaking of manufacturers of chemicals.

Cross-examination:

By Mr. PERKINS.

Q. Are you speaking of sulphate of potash, commercially known as such, such as is in that bottle, or these powders, or are you speaking of this? [showing sample;] which are you speaking of when you speak of sulphate of potash being so largely used?

A. I am speaking of this article [sample of the importation in suit].

Q. How much of that article have you bought?

A. I can not tell you without referring to our accounts; but I should say in the last two years the purchase would amount to six or seven hundred tons, perhaps a thousand tons. I am not quite sure about the amount.

Q. Do you continue still to purchase it?

A. Yes, sir.

Q. Whom did you buy this from?

A. William R. Peters & Company, New York. I think from H. J. Baker & Brother and Messrs. Heller, Hirsch & Company.

111 By the DISTRICT ATTORNEY:

Q. That is Mr. Braker over there, one of the members of the firm?

A. Yes, sir.

By Mr. PERKINS:

Q. Do you know how it was bought from Messrs. Heller, Hirsh & Company?

A. Yes, sir. We always bought it from Messrs. Baker and Peters; that is to say, we always bought it as sulphate of potash; but the invoices or bills are made out by Messrs. Baker as sulphate of potash, Peters as sulphate of potash, and by Heller, Hirsh & Company as manure salts, but we buy it as sulphate of potash.

Q. Do you know where that which you buy comes from?

A. We suppose that it comes from Germany.

Q. The article which you have in the bottle there, is that a chemical? Is that a bi-product arrived at from a chemical or mechanical process?

A. It could not be derived from any mechanical process, therefore it must be a chemical process.

Q. How is the article in the tin box obtained, if you know?

A. It is not obtained by mechanical process, therefore it must be obtained by a chemical process.

112 Q. You say it can not be obtained by a mechanical process?

A. No, sir.

Q. Do you know, of your own knowledge, how it is manufactured. Do you know what it is?

A. I have never seen it manufactured.

Q. Did you hear the testimony of Mr. Heller in court yesterday, who had seen it?

A. Yes, sir.

Q. Then you think he is altogether wrong in that?

A. His description of the process was a crude description, but as he described it it was a chemical process.

Q. Is there any chemical change in the parts of the process that you described? The bringing up of the mineral and the washing off by water; is there any chemical change arrived at in the original article by that process?

A. Allow me to say that Mr. Heller's description of the process was not such as would be taken by a manufacturing chemist as a proper description of a process.

Q. Take the process as he described it.

A. There is no such thing as washing away of a portion of the original constituent of that salt from which this is made.

113 Q. You mean to say there is no such thing as carrying away a portion of it in solution?

A. That is in solution; that is not washing it away.

Q. He did say it was washed away and one portion carried away in solution, leaving the heavy, he described it as the pasty, substance.

A. That is where he was at fault in his description.

Q. You have not seen it yourself, and therefore can not speak from your own knowledge?

A. No; I only speak quite familiarly with that sort of operation.

Q. Do you know of this article being used for fertilizing purposes—bought and sold and used by the trade for fertilizing purposes?

A. I only know of it by hearsay.

By the DISTRICT ATTORNEY:

Q. Your house is very well known, I presume, in this country as chemical manufacturers?

A. Yes, sir.

Q. What is your house?

A. Our firm is Henry Bower & Son. We are connected with Amonia Company of Philadelphia, and with the Kalion Company.

By Mr. PERKINS:

Q. How long has the Kalion been in existence?

114 A. Five years, I think, manufacturing.

Q. The Amonia Company of Philadelphia only about two years?

A. No; that has been in existence twenty-five years.

WILLIAM R. T. PITTS, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You are with what company in Philadelphia?

A. The Kalion Chemical Company.

Q. How long have you been in that business?

A. We have been about three years.

Q. Before that what was your business?

A. I have been with a number of fertilizer firms.

Q. For how many years have you had knowledge of the chemical business?

A. About twenty years; nineteen or twenty years.

Q. You are familiar with the articles used, bought, and sold in that trade, are you?

A. Yes, sir.

Q. Is there an article under the name of sulphate of potash used in that trade?

A. Yes, sir.

115 Q. Look at this sample and state under what name that is bought and sold and used in the trade. (Sample in suit.)

A. Sulphate of potash, I should say.

Q. For how many years have you known it by that name in the trade?

A. Probably ten or twelve years.

Q. To what use is that put in the trade?

A. To enrich fertilizers; give it potash.

Q. And what else, if any other use?

A. The Kalion uses it in the manufacture of bichromate of potash.

Q. Do you manufacture fertilizers?

A. We do not.

Q. Is there any other use to which the trade puts it that you know of?

A. No; I cannot say that I do of my own knowledge, anything but fertilizers and the manufacture of bichromate of potash and prussiate of potash.

Q. How about alum?

A. It is used in that to some extent.

Cross-examination:

By Mr. PERKINS:

Q. You were in the fertilizing business, I think you said?

A. I have been in the fertilizing business.

116 Q. Up to the last three years when you went with the Kalion?

A. In the last three years I have been with the Kalion and out of the fertilizing business.

Q. You knew of the use of this article in the fertilizing business, did you not?

A. Yes, sir.

Q. Used extensively so?

A. Quite so; yes, sir. Do you mean this high grade article?

Q. High grade article; yes; the high grade sulphate of potash.

A. It has not been used extensively, to my knowledge, as a fertilizer until of very recent years, until within the last five or six years, I should say.

Q. Since then it has been used very extensively?

A. I think so; yes, sir.

Q. How long have you been with the Kalion?

A. Nearly three years.

Q. To what extent do they use this particular article?
A. They use a great deal of it. At times largely.
Q. About how much?
A. I have known them to use as much as eighty tons in one month, eighty or ninety tons in one month.
Q. That is the company that gentleman, Mr. Bower, referred to?
A. Yes, sir.

117 HENRY J. BRAKER, having been duly sworn, was examined as follows::

By the DISTRICT ATTORNEY:

Q. You are of the firm of H. J. Baker & Company?
A. Yes, sir.
Q. Where is your firm in business?
A. New York City.
Q. How long has your firm been in business?
A. Since 1857, I think.
Q. How long have you yourself been a member of the firm?
A. Six or eight years. I have been with them fifteen or sixteen years.
Q. What is your business?
A. Importers of fertilizing salts, sulphate of potash, chemicals, manufacturers of fertilizers and different chemicals.
Q. To what extent a year of this stuff?
A. From one hundred and fifty to four hundred tons a year.
Q. You know the term of the sulphate of potash used in the trade?
A. Yes, sir.
Q. Look at this sample and state under what name it is bought, sold, and used in trade.

118 A. Is this stated to be sulphate of potash?
Q. That is stated to be the article in suit.

A. I should say from the looks of it, without an analysis, that was sulphate of potash.
Q. And it is bought, sold, and used under that name in trade?
A. It is sold, generally speaking, in the trade as sulphate of potash?
Q. For how many years?
A. I can remember the article myself three to five years. We have always sold it under the name of sulphate of potash, to the best of my knowledge and belief, and to the *best* of my recollection. I can not remember every sale we have made, but to the best of my recollection the majority, I will say, has been sold in that way.
Q. To what use, if you know, has this article been put in trade?
A. We have generally sold it, and of course I can not tell to what use our customers put it except from hearsay.
Q. You have knowledge of the trade use?
A. Yes, sir.
Q. What is that trade use?

119 A. It is used for alum; that salt and muriate. They advertised potash alum. We have sold to the Kalion Company and we have sold it to people in Baltimore, I think.
Q. To what use do they put it?

A. As I said before, I can only give you from the information I get from them. I am not a chemist.

Q. What is their business?

A. They are manufacturers of bichromate of potash.

Q. Are they manufacturers of fertilizers?

A. No, sir; I have sold it also to fertilizers as sulphate of potash.

Cross-examination:

By Mr. PERKINS:

Q. You know this article as high grade manure salt?

A. I know it as high grade sulphate of potash.

Q. Have you not known it as high grade manure salt?

A. I have bought it as that.

Q. Have you not bought it as such?

A. Yes, sir; and I have bought it as high grade sulphate of potash.

Q. And you have bought it as high grade manure salt?

A. And I have bought it as high grade manure salt, but at the same time I bought it as high grade manure salts I had a letter calling it high grade sulphate of potash.

120 Q. Do you use it yourself for fertilizing purposes?

A. I have, very small proportion.

Q. You sell it for fertilizing purposes?

A. I have.

Redirect by the DISTRICT ATTORNEY:

Q. From whom is this letter that you speak of, if you have the letter?

A. I have the letter in my pocket.

Q. From whom is it?

A. Heller, Hirsh & Company.

Q. Please produce it.

(Letter produced, dated June 28, 1888.)

Q. I show you this letter dated New York, June 28, 1888, signed Heller, Hirsh & Company. Please state whether or not the transaction referred to therein concerned an article similar to that of which a sample is in the tin box.

Mr PERKINS. I object to the question, as the letter is here, and will speak for itself, and there is a paper attached to it which describes it exactly. One refers to the other, and is part of the whole transaction. Put them both in and I have no objection.

The DISTRICT ATTORNEY. Certainly I will put them both in.

121 I think I am entitled to show that the article that is called there sulpate of potash is the same article as in dispute in this suit.

(Objection overruled. Exception for plaintiff.)

A. It does.

Recross-examination by Mr. PERKINS:

Q. The bought and sold note connected with this also refers to the same article, does it not?

A. It does.

Q. How extensively do you deal in this manure salt?

A. I handle about one-third that comes to this country.

Q. How much is that?

A. I should judge this year it would be from five hundred to a thousand tons.

By the DISTRICT ATTORNEY:

Q. Is that all the amount that is imported?

A. It varies different years.

Q. What was the amount imported by you last year?

Mr. PERKINS. Do you know?

A. I do not carry the figures in my pocket.

By the DISTRICT ATTORNEY:

Q. About what?

122 A. It may have been a thousand and fifteen hundred tons.

By Mr. PERKINS:

Q. How much of that did you handle? You said you had about a third?

A. We had about a third of that, I should judge. I do not know whether we imported it all or not, but we handled it here.

JAMES A. WILSON, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You are in business in Philadelphia?

A. Yes, sir.

Q. With the firm of Powers & Weightman?

A. Yes, sir.

Q. Where is their place of business?

A. They have two places, one at Ninth and Parish, and the other at the Falls of Schuylkill, and a branch company in New York.

Q. What is your business?

A. Manufacturing chemists.

Q. One of the largest firms of course in this country?

A. One of the largest general chemists in the world.

Q. How long have you had knowledge of this business?

123 A. Eighteen years.

Q. What is your position with them?

A. I have charge of their foreign accounts and importation.

Q. You are familiar with the term sulphate of potash used in the trade?

A. Yes, sir.

Q. Look at this sample in the tin box and state under what name that article is bought, sold, and used in the trade.

A. If this is the article brought here by the Government official as representing this import, it is known in the trade as crude sulphur of potash.

Q. For how many years has it been so known to your knowledge?

A. Since October, 1883.

Q. Your firm deals in that article, do they?

A. We have; yes, sir.

Q. To what use is that put in the trade?

A. We use it in the manufacture of alum and in the manufacture of medicinal salt, sulphate of potash.

Q. Is there any other use which you know of?

A. I know, but I cannot speak of them.

Q. I mean your trade knowledge.

124 A. Yes, sir; I know of a number of uses. It is used for making caustic potash, carbonate of potash; it finds it way into red and yellow prussiate, bichromate, medicinal salts, alum, and it can be used for very many purposes where a high grade or a high test article at a low unit is required.

Q. And of course used for the manufacture of fertilizers?

A. It is a very good thing to put in fertilizers.

Cross-examination:

By Mr. PERKINS:

Q. Do you use it now?

A. We do not use it at present in the manufacture of alum simply because we are making am'onia alum.

Q. How long since you stopped using it?

A. I could not say.

Q. Do you use it at all now?

A. We have not imported any for some time now.

Q. How long a time since you imported any?

A. That I cannot tell you.

Q. About how long?

A. I could not form any idea.

Q. You say you have charge of the books of the concern showing the imports?

A. I did not look at that.

125 Q. How much did you ever use of it?

A. I think our importation in 1883 was ten tons.

Q. You do not know of your having imported it since?

A. I do not know of our having imported it since.

Q. Did you ever import it before that time?

A. No, sir; not to my knowledge.

Q. Why did you stop using it?

A. Because we went into the manufacture of am'onia alum. If we wanted to make potash alum we would use it now.

Q. Did you not say one day last week to me that you stopped it because you could make your own cheaper?

A. No, sir; because we made am'onia alum and not potash alum.

Q. You have not used any since 1883 to your knowledge?

A. Haven't imported it.

Q. And never used it before?

A. No, sir; not of my knowledge.

Q. Then you imported but ten tons?

A. Imported simple the ten tons, which manufactured an article which came into the market and put it into the process of making alum.

Q. That comprises your entire knowledge of its use?

A. Yes, sir; so far as I am concerned.

Q. And you have no personal knowledge of how it is used outside excepting what you have heard this morning?

126 A. What I have heard, and what I have read, and what I have heard from other people—hearsay.

Q. Look at the crystal substance in the bottle. What is that called?

A. That is labelled Work's C. P. Sulphate of Potash. It looks very much like it.

Q. You know of sulphate of potash in that form, do you?

A. Yes, sir. That is a medicinal chemical; this is the high-grade material [sample in question].

Q. How many grades of that sulphate of potash are there crystalized?

A. There is a medicinally pure article; there is a chemically pure article. They may both be in the form either of a granular or a powder, but the granular is not used very much; mostly powder.

District attorney offered in evidence Trade Journal identified by the witnesses; also letter from Heller, Hirsh & Company to Mr. Braker, together with contract, and also the letters produced by Mr. Lenig.

Defendant's counsel offered in evidence the samples used during the trial.

Closed.

Adjourned until 2 o'clock p. m.

127 2 P. M.

Charge of the court.

McKENNAN, J.: Gentlemen of the jury: This suit is brought to recover duties exacted upon an importation of goods, as is alleged, without authority in law. A cargo of sulphate of potash was discharged at this port and duties assessed upon it and paid to the collector without any authority, as is claimed, on his part to exact the duties so paid. A similar case was before the circuit court of the United States in the district of New York. The portion of the tariff act which is in controversy here was before that court, and that case was determined by the court under circumstances which made it strikingly similar to the case now before you; and as there ought to be uniformity of decisions, of course, on questions, especially under the tariff law, and as it is just and right, so far as possible, they ought to be decided the same way, I am disposed, therefore, to adopt the view of the judge who tried the case in New York, in order that a similar result shall be reached in this case, if the facts in the cases render such decision proper and right.

128 I do not know the quantity of goods in the present suit, but it is stated on papers submitted to you. The collector, determining that the cargo fell within a certain section of the act of Congress, assessed the duty of twenty per cent, whereas on the part of the importer it is claimed that under another section of the tariff law they were not subject to any duty at all; they were free.

That this article is sulphate of potash is beyond all question. It is so designated by the witnesses on both sides and is so regarded in the trade. Whether then the duties claimed were chargeable under that portion of the tariff act which imposed a duty of twenty per cent, or whether they are free, is the question to be determined in this case.

By the 70 paragraph of the tariff act, Schedule A, twenty per cent duty ad valorem is imposed upon sulphate of potash, and in the free list guano, manures, and all substances expressly used for manure are free from duty. So that whether this article comes within the scope of

129 either of these sections is the question for you to determine.

That this article is sulphate of potash is beyond all question, and under ordinary circumstances, therefore, a duty of twenty per cen would be chargeable. Whether it is relieved or not from any duty is to be determined by the construction of the 505 tariff act, which relieves guano, manure, and all substances expressly used for manure free from duty.

I do not regard the two sections as irreconsi'ably inconsistent. In the first place, sulphate of potash is subject to a duty of twenty per cent, and in the next place, sulphate of potash used for manure or as a fertilizer is free from duty. So that it may be regarded as properly understood by this act of Congress that while sulphate of potash is subject to a duty of twenty per cent, yet if it is used for the purposes of manure it is free from duty. [It depends, therefore, upon the use to which the article is to be applied, whether it is subject to duty or falls within the purview of the free list.] Exception for defendant.

As I have already said, all the witnesses on both sides speak of
130 an article of sulphate of potash which is subject to a duty of twenty per cent [and it is to be determined now whether the use to which this article is applicable, or for which it is to be expressly used, takes it out of the operation of the portion of the act which subjects it to a duty of twenty per cent.] Exception for defendant.

In the case in New York the article was sulphate of potash upon which duty was imposed, but as it was held by the judge to have been proved by the evidence that it was to be expressly used for manure, it was held by him it was not subject to the duty imposed in the body of the act.

As I said before, this article was imported as sulphate of potash, and was therefore apparently subject to a duty of twenty per cent, but for what purpose was it used? What is the meaning of that portion of the tariff act which relieves from duty all substances used for manure? I do not see what other construction can be given to the act of Congress than this, that dutiable articles, if they are intended for use or are imported
131 for the purpose of being used in manure, are relieved from the duty of twenty per cent.

In the language of Judge LaCombe, who tried the case in New York, "The clause here, No. 505 in the free list, reading, 'guano, manures, and all substances expressly used for manure,' very clearly expresses, and there seems no doubt that by the use of this phrase Congress has plainly said, that all imported substances (whether especially provided for eo nomine or covered by any general language descriptive of their origin or qualities) which subserve the purpose of enriching the soil, and thus increasing the crops to be raised upon it, should be free.

That is the plain meaning of the paragraph as it stands. I think we should err if, from some strained and overelaborate examination of a great many other paragraphs in the act, we should seek to spell out some understanding or conception of what we might possibly infer had been the intent as expressed by the plain language we have used. It is very true that the use of the word 'expressly' may make this paragraph difficult of application in very many cases, and, in fact, all cases so far as the
132 collector is concerned; but it gives us no trouble in this particular action, because there is abundant evidence here to warrant the holding that these particular importations were expressly used for manure. They have been traced from their importer into the hands of individuals

whose sole business is the preparation of 'fertilizers', which word is a mere synonym for manure; and should the jury draw from the testimony any other inference than that the articles were expressly used for manure, I should be inclined to set aside the verdict. Therefore I think it is unnecessary to send the question to them. The defendant refers to the well-settled rule of interpretation that a specific designation will prevail over a general one, but the clause which he contends to be a general one (ses. 505 supra), is in reality more specific than the paragraph under which he insists these imports should be classed (par. 70, 'sulphate of potash'), because from the general class of articles properly classified as sulphate of potash it differentiates that smaller portion which are 'expressly used for manure.'"

So here, while the article which is the subject of importation,
133 is generally sulphate of potash, its dutiable character is to be determined by the use for which it was imported or to which it is applied. It undoubtedly subjects the classification and dutiability of articles falling within the general scope of the act by the collector, but the question is whether under the act of Congress the article is subject to duty or not, and that is to be determined by the purpose for which it is used or to be used. Was it for manure? [If so, under the view Judge La Combe takes of the law, it is not subject to duty, and in that decision I am inclined to concur.] Exception for defendant.

You have, then, here this article, while it is described as sulphate of potash, shown by the testimony to have been imported by a person who is engaged in the manufacture of fertilizers, of which the sulphate of potash is the principal constituent. It was, therefore, intended, so far as he was concerned, to be used as manure, and we must so conclude. It then passes by sale by him to a person who was engaged in the manufacture of fertilizers, and was used in the preparation of that article of merchandise. If
that be so, then you will be justified in finding that this sulphate
134 of potash was, within the meaning of the act of Congress, expressly used for manure, and if so, it was not subject to any duty.

If you are satisfied upon that subject, then you would be justified in finding, and you would be bound to find, that the collector was in error in imposing any duty whatever upon this article. However difficult it might have been for him to ascertain that fact, yet it would seem to be necessary to the effectuation of the attempt of Congress in relieving such articles from duty altogether to inquire into the use to which this article was applied after it passed into the hands of the manufacturer.

[I therefore instruct you, if you find that this article was used in the manufacture of manure, or was used as manure, that it is not subject to a duty, and your verdict should be for the plaintiff.] Exception for defendant.

The plaintiff and defendant have both submitted to me certain points upon which they ask me to instruct you, but taking the view that was taken by the judge of the circuit court of the United States at New York, and desiring that there should be uniformity of opinion upon the construction of the act of Congress as far as possible, I instruct you as I have done, and decline to instruct you as asked by the counsel for the plaintiff or defendant.

135 If you find, as I have stated, then your simple duty is to ascertain the amount of duties paid by the plaintiff here, and find a verdict in his favor for the amount so paid. Of course I mean this importation, which is the subject before you.

Plaintiff's points.

"1. If you find that the article constituting the subject of this suit is not commercially known as 'sulphate of potash,' and that it is expressly used for 'manure,' your verdict must be for the plaintiff.

"2. Even if you find that the article in question is sometimes known commercially as 'sulphate of potash' if you also find that there are other varieties of sulphate of potash used for purposes other than as manure, and that the article in question is used expressly for manure, then your verdict must be for the plaintiff.

"2½. If, upon all the facts in this case, there exists in your minds a doubt, your verdict must be for the plaintiff, as duties are never to be imposed on the citizen upon vague or doubtful interpretations.

136 "3. Under all the evidence in this case your verdict must be for the plaintiff."

Defendant's points.

"1. It having been shown that the article in suit is bought, sold, and used in trade as sulphate of potash, it is provided for in the tariff act of 1883 under that name, and your verdict should be for the defendant." Refused. Exception for defendant.

"2. The article in suit is not provided for in the provisions of the tariff act of , par. 505, T. I. New of the free list, 'all substances expressly used for manure,' inasmuch as the evidence shows that the substance in suit is not so used, 'in the manufacture of manure or fertilizers only,' and your verdict should be for the defendant." Refused. Exception for defendant.

"3. The article in suit is sulphate of potash and the tariff thereon is provided for for that article specifically, and will not be assessed under the more general expression contained in par. 505, T. I. New, 'all substances used for manure,' and your verdict should be for the defendant." Refused. Exception for defendant.

"4. Your verdict in this case should be for the defendant." Refused. Exception for defendant.

The jury rendered a verdict in favor of plaintiff.

137 And thereupon the counsel for the said defendant did then and there except for the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion so excepted to do not appear upon the record.

The said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided this 9th day of May, A. D. 1890.

W. McKENNAN, [L. S.]
Cir. Judge.

138 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Harry R. Shultz vs. John Cadwalader, collector of customs for the district of Philadelphia, No. 16, October session, 1889, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 25th day of August, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundredth and fifteenth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

(Indorsed on cover:) No. 202. John Cadwalader, collector of customs for the district of Philadelphia, plaintiff in error, vs. Harry R. Shultz. E. Pennsylvania C. C. U. S. Filed September 27, 1890.